No. 88-1507

FILED

SEP 1989

JOSEPH F. SPANIOL, CLERK

IN THE

Supreme Court of the United States

October Term, 1989

The Board of Education of the Westside Community Schools (Dist. 66); Wayne W. Meier, President of the Westside Community School Board; James E. Findley, Principal of the Westside High School; James A. Tangdall, Assistant Superintendent of the Westside Community School District; and Kenneth K. Hansen, Superintendent of the Westside Community School District,

Petitioners,

Bridget C. Mergens, by and through her next friend, Dr. Daniel N. Mergens; Stephen P. Hollar, by and through his next friend, Mrs. Judith L. Hollar; Brian P. Rensing, by and through his next friends, Robert W. and Sherry K. Rensing; David K. Harris, by and through his next friends, Kenneth and Myra Harris; and Andrea Simmons, by and through her next friends, Robert L. and Linda L. Simmons,

Respondents,

United States of America,

Respondent,

Kendra K. Kellison, etc. by and through her next of friends, Victor Kraatz and Linda Kraatz; Michelle M. Harris, etc. by and through her next of friends, Kenneth Harris and Myra Harris; and Kevin Brown, etc. by and through his next of friends, Robert W. Rensing and Sherry K. Rensing; Matt Schulz; Ingrid Kimmons; Jason Brone; Jennifer Waggoner; and Allison Wells,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Bridget C. Mergens, By & Through her next friend, Dr. Daniel N. Mergens; Stephen P. Hollar, by & through his next of friend, Mrs. Judith L. Hollar; Brian P. Rensing, by & through his next of friends, Robert W. & Sherry K. Rensing; David K. Harris, by & through his next of friends Kenneth & Myra Harris, and, Andrea Simmonds, by & through her next of friends, Robert L. & Linda L. Simmonds,

APPELLANTS

U.S.A. Intervenor-Plaintiff Below

Kendra K. Kellison, etc. by and through her Next of Friends, Victor Kraatz and Linda Kraatz; Michelle M. Harris, etc. by and through her Next of Friends, Kenneth Harris and Myra Harris; Kevin Brown, etc. by and through his next of Friends Robert W. Rensing and Sherry K. Rensing,

APPELLANTS

Matt Schulz; Ingrid Kimmons; Jason Brune; Jennifer Waggoner and Alison Wells added as APPELLANTS per ORDER of March 28, 1989.

APPELLANTS

vs.

The Board of Education of the Westside Community Schools (Dist. 66) Wayne W. Meier, President of the Westside Community

School Board; James E. Findley, Principal of Westside High School; James A. Tangdall, Assistant Superintendent of the Westside Community School District & Kenneth K. Hansen, Superintendent of the Westside Community School District,

APPELLEES

CASE NO. 88-1227NE

RELEVANT DOCKET ENTRIES

DATE	FILINGS PROCEEDINGS	PLEADING NUMBER
1988		
Feb. 11	DOCKETED APPEAL	(1)
Apr. 11	BRIEF OF INTERVENOR (United States) 7 copies serv. 4/8/88	(10)
Apr. 25	BRIEF OF APPELLANT w/ Addendum w/ser 4/22 7 copies	(13)
June 17	BRIEF OF APPELLEES w/ser 6/16/88 7 copies	(18)
July 5	REPLY BRIEF w/ser 7/1 7 copies	(19)
Sept. 2	**SET FOR ARGUMENT** IN OCTOBER IN ST. PAUL	

Oct. 5	MOTION to add additional plaintiffs/appellants To Court	(20)
Oct. 17	ARGUED AND SUBMITTED BEFORE CHIEF JUDGE LAY AND JUDGES F. GIBSON AND McMILLIAN IN ST. PAUL. Douglas W. Davis for the Appellant; Brant M. Laue for the Intervenor/Appellant (Split Arg). Allen E. Daubman for the appellee. RECORDED.	
1989		
Feb. 8	OPINION BY McMILLIAN PUBLISHED.	(22)
Feb. 8	JUDGMENT: Judgment of the district court is reversed in accordance with the opinion of this Court.	(23)
Feb. 17	APPELLANTS' BILL OF COSTS. w/service.	(24)
Feb. 17	APPELLANTS' MOTION FOR ATTORNEY FEES. w/service.	(25)
Feb. 21	APPELLANTS' MOTION FOR CLARIFICATION of court's position as to pl/aplnts' motion to add additional	

pl/aplnts filed _ 10/4/88. (31)

Feb. 22 APPELLEES' MOTION for stay of mandate pending application to the Sup. Ct. for writ of cert. (32)

Feb. 23 RESPONSE requested to motion for clarification.

Mar. 6 RESPONSE of aplees to mot. for clarification. w/service. (34)

Mar. 3 OBJECTION by appellees to bill of costs. w/service. (35)

Mar. 3 APPELLEES OBJECTION TO MOT FOR ATT. FEES. (39)

Mar. 3 APPELLANTS' mot. in opposition to mot for stay of mandate. (40)

Mar. 28 ORDER: Appellant Mergens' motion to add additional appellants to the above-entitled action is granted. The title of this case shall be amended to show the following individuals as appellants in the lawsuit: Matt Schulz, Ingrid Kimmons, Jason Brune, Jennifer Waggoner

& Alison Wells. Ruling on bill of costs & motion for attorney fees will be held in abeyance pending disposition by the Supreme Court of the U.S. of appellees' timely-filed petition for writ of cert. Stay of mandate will be granted until April 27, 1989. If by that date the Clerk has not received notification from the Sup. Ct. that a timely petition for writ of cert has been filed, the Clerk shall bring this case to the attention of the Court for further entry of order on fees and costs. (42)

Apr. 6 RECD copy of Pet. for Writ of Certiorari fm. aplee

Apr. 7 NOTICE OF FILING of pet. for writ of cert. to the Sup. Ct. of the U.S. as case no. 88-1597 dated 3/30/89 (43)

July 5 CERTIFIED COPY OF ORDER OF THE Sup. Ct. granting certiorari in case no. 88-1597 dated 7/3/89 (44)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIDGET C. MERGENS, By and Through Her Next Friend, Dr. Daniel N. Mergens, STEPHEN P. HOLLAR, By and Through His Next Friend, Mrs. Judith L. Hollar, BRIAN P. RENSING, By and Through His Next of Friends, Robert W. and Sherry K. Rensing, DAVID K. HARRIS, By and Through His Next of Friends, Kenneth and Myra Harris, and ANDREA SIMMONDS, By and Through Her Next of Friends, Robert L. and Linda L. Simmonds,

Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS (District 66), WAYNE W. MEIER, President of the Westside Community School Board, JAMES E. FINDLEY, Principal of Westside High School, JAMES A. TANGDALL, Assistant Superintendent of the Westside Community School District, and KENNETH K. HANSEN, Superintendent of the Westside Community School District,

Defendants.

CIVIL ACTION NO. 85-0-426

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1985		
Apr. 17	1.	Complaint w/req/ for Jury Trial at Omaha. Issued Summons - handed to P's counsel.
	1.	Complaint w/req. for Jury Trial at Omaha. Issued Summons - handed to P's Counsel.
May 10	14.	Motion of United States of America To Intervene as Party Pl, with attachment.
	16.	Ctrm. Min. b/4 CAB - Hrg. on P's Mot. for Prel. Inj. - submitted.
May 23	21.	Order (CAB) that Ps' Req. for Prel. Inj. #1 is denied.
June 3	22.	Answer of Ds to Ps' Complaint.
Aug. 22	43.	U.S.A.'s Complaint in Intervention.
	44.	Dfs' Answer to Complaint In Intervention.
Oct. 4	54.	P's Mot. for SJ.
Nov. 6	64.	Order (CAB) - IT IS ORDERED as follows: 1. Pls' motion (filing 52)

is granted instanter. 2. Pls' motion (filing 54) is denied.

65. Pls' Amended Complaint.

66. Dfs' Answer to Amended Complaint.

1986

Jul 7 — 92. P's w/drawal of jury trial demand.

Nov 26 — 104. Order on final PTC held 11-26-86; (RCP) Trial 3-87.

105. Order in Suppl. of PTO (RCP) Ds' Obj. to 10 students, denied; Ps' Mot. (#102) for leave to designate out of time expert witnesses is granted; w/in 10, Ps to suppl. ans. to interrob. (sic), etc. further depos. disc. to be ext. to 3-14-87; etc. Copies mailed to counsel.

1987

Mar 31 — 109. Ps' amended PTO.

Apr 8 — 113. Ctrm Min CAB; Trial Cont'd.

Apr 9 — 114. Ctrm Min CAB; Trial Cont'd.

Apr 14 — 121. Courtroom Minutes - trial on 4-9-87, trial continued to 4-14-87 at 1:30 p.m.

Apr 14 — 122. Crtrm. Min. trial (CAB) continued 4/15/87 a.m.

Apr 16 — 123. Ctrm. Min. b/4 CAB - Oral Arg. & Final Arguments - submitted; briefing schedule set.

1988

Feb 2 — 126. Memo (CAB).

127. Order (CAB) that Judgment should be entered in favor of Defs; that Ps complaint is dismissed. Copies mailed.

Feb 3 — 128. P's Not of appeal w/cert of serv. Copy mailed to Peggy Casper.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Bridget C. Mergens, By & Through her next friend, Dr. Daniel N. Mergens; Stephen P. Hollar, by & through his next of friend, Mrs. Judith L. Hollar; Brian P. Rensing, by & through his next of friends, Robert W. & Sherry K. Rensing; David K. Harris, by & through his next of friends Kenneth & Myra Harris, and, Andrea Simmonds, by & through her next of friends, Robert L. & Linda L. Simmonds,

APPELLANTS

U.S.A. Intervenor-Plaintiff Below

Kendra K. Kellison, etc. by and through her Next of Friends, Victor Kraatz and Linda Kraatz; Michelle M. Harris, etc. by and through her Next of Friends, Kenneth Harris and Myra Harris; Kevin Brown, etc. by and through his next of Friends Robert W. Rensing and Sherry K. Rensing,

APPELLANTS

Matt Schulz; Ingrid Kimmons; Jason Brune; Jennifer Waggoner and Alison Wells added as APPELLANTS per ORDER of March 28, 1989.

APPELLANTS

vs.

The Board of Education of the Westside Community Schools (Dist. 66) Wayne W. Meier, President of the Westside Community School Board; James E. Findley, Principal of Westside High School; James A. Tangdall, Assistant Superintendent of the Westside Community School District & Kenneth K. Hansen, Superintendent of the Westside Community School District,

APPELLEES

CASE NO. 88-1227NE

ORDER

This appeal from the United States District Court was submitted on the record of the District Court, briefs of the parties, and was argued by counsel. After consideration, it is hereby ordered and adjudged that the judgment of the District Court is reversed in accordance with the opinion of this Court.

DATED February 8, 1989.

(The opinion of the Court of Appeals omitted in printing. It is reproduced in the Petition for a Writ of Certiorari - Appendix A.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIDGET C. MERGENS, et al.,	)	CV 85-0-426
Plaintiffs,	)	
vs.	)	**ORDER**
THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS, et al.,	)	
Defendants.	)	

In conformance with the Memorandum of this date,

IT IS ORDERED as follows:

1. Judgment should be and hereby is entered in favor of the defendants.

2. The plaintiffs' complaint should be and hereby is dismissed.

DATED this 2nd day of February, 1988.

(The opinion of the District Court omitted in printing. It is reproduced in the Petition for a Writ of Certiorari - Appendix B.)

BY THE COURT:

/s/C. Arlen Beam
C. ARLEN BEAM
U.S. District Judge
Sitting by Special Designation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIDGET C. MERGENS, By and Through Her Next Friend, Dr. Daniel N. Mergens, STEPHEN P. HOLLAR, By and Through His Next Friend, Mrs. Judith L. Hollar, BRIAN P. RENSING, By and Through His Next of Friends, Robert W. and Sherry K. Rensing, DAVID K. HARRIS, By and Through His Next of Friends, Kenneth and Myra Harris, and ANDREA SIMMONDS, By and Through Her Next of Friends, Robert L. and Linda L. Simmonds,

Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS (District 66), WAYNE W. MEIER, President of the Westside Community School Board, JAMES E. FINDLEY, Principal of Westside High School, JAMES A. TANGDALL, Assistant Superintendent of the Westside Community School District, and KENNETH K. HANSEN, Superintendent of the Westside Community School District,

Defendants.

CIVIL ACTION NO. 85-0-426

JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT AND APPLICATION FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW, Bridget C. Mergens, a minor, by and through her Next of Friend, Dr. Daniel N. Mergens; Steven P. Hollar, a minor, by and through his Next of Friend, Judith L. Hollar; Brian P. Rensing, by and through his Next of Friends, Robert W. and Sherry K. Rensing; David K. Harris, a minor, by and through his Next of Friends, Kenneth and Myra Harris; and, Andrea Simmonds, by and through her Next of Friends, Robert L. and Linda L. Simmonds, Plaintiffs herein, complaining of The Board of Education of The Westside Community Schools, Wayne W. Meier, James E. Findley, James A. Tangdall, and Kenneth K. Hansen, hereinafter referred to as Defendants, and would respectfully show unto the Court the following:

I

THE PARTIES

1. Plaintiffs are residents and citizens of Omaha, Douglas County, Nebraska.

2. The Westside Community Schools (District 66), is an independent school district, organized and existing under the Constitution and Laws of the State of Nebraska, for public secondary school

purposes, and is managed, governed and controlled by the Defendant, The Board of Education of the Westside Community Schools, its president, Wayne W. Meier.

3. Defendant, Wayne W. Meier, a resident of Douglas County, Nebraska, is the President of The Board of Education of Westside Community Schools and is sued in his individual and official capacity pursuant to Nebraska Reissue Revised Statutes 79-452 to 79-455. He may be served with summons and notice at 909 S. 76th Street, Omaha, Nebraska 68114 and at 2226 Ridgewood Avenue, Omaha, Nebraska 68124.

4. Defendant, James E. Findley, a resident of Douglas County, Nebraska, is the Principal of Westside High School, and is sued in his individual and official capacity. He may be served with summons and notice at 3110 S. 104th Street, Omaha, Nebraska 68124, and at 8701 Pacific Street, Omaha, Nebraska 68114.

5. Defendant, James A. Tangdall, a resident of Douglas County, Nebraska, is

the Assistant Superintendent of Schools for Westside Community Schools and is sued in his individual and official capacity. He may be served with summons and notice at 7426 Spring Street, Omaha, Nebraska 68124, and at 909 South 76th Street, Omaha, NE 68114.

6. Defendant, Kenneth K. Hansen, a resident of Douglas County, Nebraska, is the Superintendent of Schools for Westside Community Schools and is sued in his individual and official capacity. He may be served with summons and notice at 10806 Larimore Avenue, Omaha, Nebraska 68164, and at 909 South 76th Street, Omaha, NE 68114.

II

JURISDICTION

7. Jurisdiction over the claim is conferred by 28 U.S.C. §§ 1331, 1343 and 1344 and 42 U.S.C. §§ 1983, 1985 and 1988 and arises under the First and Fourteenth Amendments to the United States Constitution and The Equal Access Act, Pub. L. No. 98-377, 98 Stat. 1302 (1984). Declaratory relief is authorized by 28

U.S.C. §§ 2201 and 2202 and Rule 587, FRCP.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

III

NATURE OF THE DISPUTE

9. This is a civil action for declaratory and injunctive relief and for damages and attorneys fees for violation of the Constitution and Laws of the United States. Plaintiffs, on behalf of themselves and others similarly situated, seek a declaration that the refusal of the Defendants to permit a wholly student-initiated non-denominational fellowship group to meet before or after school at Westside High School, while permitting other groups comprised of students to use the school's facilities, violates the First Amendment of The Constitution of the United States and the equal protection clause of the Fourteenth Amendment of The Constitution of the United States including Plaintiffs' right to free speech, freedom of assembly and association, free exercise of religion and the establishment clause therein,

Article I of the Nebraska Constitution, specifically Section 1 thereof dealing with equal rights and Section 4 thereof dealing with religious freedom, as well as the Civil Rights Act and the Equal Access Act.

IV

FACTUAL BACKGROUND

10. Plaintiff Bridget C. Mergens, age 18, is a senior student duly enrolled at and attending Westside High School, Omaha, Douglas County, Nebraska, which is within the jurisdiction, authority and supervision of the Defendants. She brings this action by and through her Next of Friend, Dr. Daniel N. Mergens.

11. Plaintiff Stephen P. Hollar, age 17, is a junior enrolled at Westside High School. He brings this action by and through his Next of Friend, Judith L. Hollar.

12. Plaintiff Brian P. Rensing, age 17, is a sophomore enrolled at Westside High School. He brings this action by and

through his Next of Friends, Robert W. and Sherry K. Rensing.

13. Plaintiff David Harris, age 17, is a senior enrolled at Westside High School. He brings this action by and through his Next of Friends, Kenneth and Myra Harris.

14. Plaintiff Andrea Simmonds, age 18, is a senior enrolled at Westside High School. She brings this action by and through her Next of Friends, Robert L. and Linda L. Simmonds.

15. Westside Community Schools is a school district existing in Omaha, Nebraska, pursuant to Nebraska Reissue Revised Statutes of 1943, 79-101, et seq. As such, it is governed, managed and operated by a duly elected Board of Education charged with responsibility for administering the schools under its jurisdiction, including Westside High School. The school district and Westside High School receive federal financial assistance.

16. Defendant Kenneth K. Hansen is the Superintendent of Westside Community Schools and as such is the chief administrative officer of The Board of

Education of Westside Community Schools and the Executive Administrator of Westside Community Schools.

17. In January, 1985, Plaintiff Bridget C. Mergens met with Defendant James E. Findley, the Principal of Westside High School, and requested permission to form a club which would meet before or after school on the same basis as other school clubs. Plaintiff Bridget C. Mergens informed Findley that the club would be a Christian club and that the group wanted to meet under the guidelines formulated by the Equal Access Act. Findley stated that it sounded like a great idea but that it would not be permitted because under equal access, the school did not have an "open forum".

18. In early February, 1985, Plaintiff Bridget C. Mergens met with Defendant James Tangdall, the Assistant Superintendent for Westside Community Schools and requested permission to form a Christian club or fellowship group at Westside High School. He also informed Plaintiff Bridget C. Mergens that the

school did not have an "open forum" and that a group such as Plaintiff Mergens was proposing would not be permitted to meet.

19. In mid-February, 1985, Plaintiff Bridget Mergens met with and was informed by Defendants, Findley and Tangdall, that her request to form a Christian club had been discussed with Defendant, Hansen, and that Defendants, Hansen, Tangdall and Findley had all agreed that Plaintiff Mergens' request for a Christian fellowship group or club should be denied.

20. On March 4, 1985, after being regularly scheduled on the School Board agenda, Plaintiff Bridget C. Mergens petitioned The Board of Education for Westside Community Schools for permission to form a Christian fellowship group at Westside High School within the guidelines of the Equal Access Act. The Board of Education voted to uphold the decision of James E. Findley, Principal of Westside High School and the decisions of James A. Tangdall, Assistant Superintendent and Kenneth K. Hansen, Superintendent of Westside Community Schools and denied Plaintiff Bridget C. Mergens' request for

equal access. Plaintiffs attach as Exhibit "A" a copy of the Minutes of the Defendant Board of Education Meeting of March 4, 1985.

21. At all times in contacting the Defendants in this action, Plaintiff Bridget Mergens clearly stated that she did not desire preferential treatment for the proposed group. She clearly stated that she only wanted the same access to school facilities as is afforded other student groups within District 66.

22. Westside Community School District permits other groups, organizations and clubs composed of students to use its facilities. Indeed, the school district makes its facilities generally open to non-curriculum student groups before or after actual classroom instruction. In so doing, Westside High School has created a "limited open forum." Plaintiffs attach as Exhibit "B" a copy of a list of student groups currently in existence and

utilizing the facilities of Westside High School.

23. Upon information and belief, the Westside Community School District permits student clubs and/or groups to exchange ideas and opinions on topics of history, community service, cultural differences and personal growth and development.

24. Each of the Westside Plaintiffs desire and intend to participate in the Christian fellowship club or group requested by Plaintiff Mergens.

25. The club or group proposed by Plaintiff Mergens will not cause any disruption or interference with the school's work or the rights of other students to be secure and to be left alone.

26. No space or time limitations justify the Defendants' refusal. Indeed, the sole reason for Defendants' refusal is their belief that to permit a club with any religious overtones would violate the establishment clause of the First Amendment.

27. The Westside Plaintiffs have not requested and, indeed, do not desire the school district to promote, lead or participate in the meetings.

28. The Westside Plaintiffs have not requested and, indeed, do not desire to be treated any differently than other groups which meet under the forum created at Westside High School.

29. Defendant School Board, as part of its administrative functions, has established a number of regulations that apply to the District 66 school system. As Exhibit "C", Plaintiffs attach a copy of Policy 5450 which deals with Freedom of Expression; as Exhibit "D", Plaintiffs attach a copy of Policy 5610 which deals with Student Clubs and Organizations, and as Exhibit "E", Plaintiffs attach a copy of Policy 6180 which deals with the Recognition of Religious Beliefs and Customs.

30. Plaintiffs have attached Exhibits "A" through "E" inclusive and incorporate same herein by reference thereto.

COUNT I

31. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

32. Defendants' denial of the Westside Plaintiffs (sic) request for permission to use school facilities, and prohibition of the meetings proposed by Plaintiff Mergens, on grounds of the religious content of the proposed meetings, violates the Plaintiffs' First Amendment right to freedom of speech without regulation or restriction by the State on the basis of the content of the speech and constitutes a prior restraint for which no reasonable justification exists.

COUNT II

33. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

34. Defendants' refusal to permit Plaintiffs to meet and assemble on school property violates their First Amendment right or association and to assembly.

COUNT III

35. Plaintiffs incorporate by reference

the allegations contained in paragraphs 1 through 30 above.

36. Plaintiffs are Christians who believe they have a right to perform all tasks in school to the glory of God, including the right to share with their fellow Christians how their religious faith aids them with their daily problems.

37. The rights and privileges requested by Plaintiffs for their proposed meetings are the same as the rights and privileges routinely afforded to other student groups, both curriculum and non-curriculum, that of expression of ideas regardless of the content of those ideas.

38. Defendants' refusal to allow Plaintiffs to hold their proposed meetings violates the Plaintiffs' right to the free exercise of their religious beliefs under the First Amendment to the Constitution of the United States, and constitutes a failure to give reasonable accommodation to the Plaintiffs' religious beliefs. This constitutes a prior restraint for which no reasonable justification exists.

COUNT IV

39. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

40. Defendants' actions violate the prohibition of the Establishment Clause of the First Amendment to the Constitution of the United States against State hostility toward religion.

COUNT V

41. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

42. Defendants' actions violate the Plaintiffs' right to the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States because they discriminate against Plaintiffs based solely on the fact that Plaintiffs wish to engage in religious speech.

COUNT VI

43. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

44. Defendant Board of Education of the

Westside Community Schools' (District 66) policy regarding student clubs and organizations, which is incorporated in Policy No. 5610, violates the due process clause and equal protection clause of the Fourteenth Amendment, is unconstitutionally vague and is unconstitutional as applied to the facts of this case.

COUNT VII

45. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

46. Defendants' violation of Plaintiffs' constitutional rights under the First and Fourteenth Amendments of the United States Constitution also violates 42 U.S.C. § 1983.

COUNT VIII

47. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

48. Defendants (sic) denial of Plaintiffs' request to have a voluntary student initiated fellowship group or club at Westside High School while allowing other student groups to freely meet at

Westside High School constitutes a violation of the equal rights provision of the Nebraska Constitution, Article I, Section 1.

COUNT IX

49. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

50. Defendants' refusal to allow Plaintiffs to hold their proposed meetings is a violation by Defendants of Plaintiffs' rights to religious freedom under the Nebraska Constitution, Article I, Section 4.

COUNT X

51. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

52. Defendants have co-ordinated (sic) and co-operated (sic) among themselves to perform the actions alleged above, thus conspiring to discriminate against and violate the civil rights of the Plaintiffs in violation of 42 U.S.C. § 1985.

COUNT XI

53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

54. Defendants' actions violate the Equal Access Act, Tit. VII, Pub. L. No. 98-377, 98 Stat. 1302, et seq. (1984).

COUNT XII

55. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

56. Defendants' denial of Plaintiffs' request to form a Christian fellowship group or club is a direct violation of Defendant School Board's Policy 5450 (Exhibit "D").

COUNT XIII

57. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 30 above.

58. Defendants' denial of Plaintiffs' request to form a Christian fellowship group or club is a direct violation of Defendant School Board's Policy 6180 which provides for a position of neutrality towards religion and religious beliefs.

COUNT XIV

59. Plaintiffs hereby request this Court to grant them injunctive relief to prevent the immediate and irreparable injury, loss or damage that will result if Defendants continue to refuse to permit Plaintiffs to exercise their rights guaranteed under The Constitution of The United States, The Nebraska Constitution, The Civil Rights Act and under The Equal Access Act. Plaintiffs have no adequate remedy at law for Defendants' violation of these rights.

COUNT XV

60. Plaintiffs further invoke the jurisdiction of this Court pursuant to the Federal Declaratory Judgment Act and ask this Court to order, adjudge and declare that the Defendants' policy of refusing to permit Plaintiffs to use the facilities of the school during non-instructional time violates the First and Fourteenth Amendments of the United States Constitution and the Equal Access Act. Plaintiffs further seek to be awarded their costs and reasonable attorneys' fees necessarily incurred in pursuing this

action pursuant to the Federal Declaratory Judgment Act and 42 U.S.C. § 1988.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Bridget C. Mergens, by and through her Next of Friend, Dr. Daniel N. Mergens, Stephen P. Hollar, by and through his Next of Friend, Mrs. Judith L. Hollar, Brian P. Rensing, by and through His Next of Friends, Robert W. and Sherry K. Rensing, David K. Harris, by and through his Next of Friends, Kenneth and Myra Harris, and Andrea Simmonds, by and through her Next of Friends, Robert L. Simmonds and Linda L. Simmonds, pray that: (1) Defendants be cited to appear and answer herein; (2) this Court set for hearing Plaintiffs' Request for Preliminary Injunction at the earliest practical time consistent with justice and the Court's schedule and that upon hearing thereof, this Court issue its order enjoining the Defendants and each of them from refusing to permit Plaintiffs to conduct meetings or a club on school premises during non-instructional time, ordering Defendants to permit Plaintiffs

to conduct meetings or a club on the school premises during non-instructional time, enjoining Defendants from engaging in any activity or behavior which violates the Equal Access Act, enjoining Defendants from closing the school to other clubs, and enjoining the Defendants from punishing Plaintiffs in any way for the actions complained of herein until a final hearing on the merits thereof; (3) upon a final hearing, this Court declare that the policy of The Board of Education of the Westside Community Schools of denying equal access to and discriminating against the student initiated use of school facilities for non-denominational Christian fellowship group during non-instructional times is unconstitutional and void on its face and/or as applied; (5) award Plaintiffs nominal damages; (6) award Plaintiffs their reasonable attorneys' fees; and (7) award Plaintiffs all costs of Court, and such other and further relief, legal or equitable, general or special, to which they may show themselves justly entitled.

RESPECTFULLY SUBMITTED,

/s/Douglas Veith
DOUGLAS VEITH, Attorney #16771
PELTON, BERTOLINI,
SCHROEDER & VEITH
1319 - 21 Galvin Road, South
Bellevue, Nebraska 68005
Telephone: (402) 292-2800
ATTORNEY IN CHARGE FOR PLAINTIFFS

/s/Robert K. Skolrood
ROBERT K. SKOLROOD,
General Counsel, The Freedom Council Foundation
825-M Greenbrier Circle Drive
Chesapeake, Virginia 23320
Telephone: (804) 424-7777
CO-COUNSEL FOR PLAINTIFFS

/s/Douglas W. Davis
DOUGLAS W. DAVIS, Attorney
The Freedom Council Foundation
825-M Greenbrier Circle Drive
Chesapeake, Virginia 23320
Telephone: (804) 424-7777
CO-COUNSEL FOR PLAINTIFFS

(Affidavits of individual Plaintiffs, verifying facts alleged in Petition, omitted in printing.)

(Exhibit "1" to Complaint omitted in printing. It appears as Trial Exhibit 60 reproduced in relevant part at page 464 of this Appendix.)

TO: Homeroom Advisors: Please use this as a reference with your advisees. Meetings, tryouts, etc. are held throughout the year. Students should listen to announcements and keep apprised of these co-curricular opportunities.

FROM: Ron Huston

DATE: August, 1984

STUDENT ACTIVITIES

* * *

(The remainder of this Exhibit "B" omitted in printing. It appears as Trial Exhibit 63 reproduced at page 479 of this Appendix.)

EXHIBIT "B"

(Exhibit C to the Complaint omitted in printing. It appears as Trial Exhibit 72 reproduced at page 489 of this Appendix.)

(Exhibit D to the Complaint omitted in printing. It appears as Trial Exhibit 71 reproduced at page 488 of this Appendix.)

(Exhibit E to the Complaint omitted in printing. It appears as Trial Exhibit 59 reproduced at page 462 of this Appendix.)

(Certificate of Service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

BRIDGET C. MERGENS, By and Through Her Next Friend, Dr. Daniel N. Mergens, STEPHEN P. HOLLAR, By and Through His Next Friend, Mrs. Judith L. Hollar, BRIAN P. RENSING, By and Through His Next of Friends, Robert W. and Sherry K. Rensing, DAVID K. HARRIS, By and Through His Next of Friends, Kenneth and Myra Harris, and ANDREA SIMMONDS, By and Through Her Next of Friends, Robert L. and Linda L. Simmonds,

Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS (District 66), WAYNE W. MEIER, President of the Westside Community School Board, JAMES E. FINDLEY, Principal of Westside High School, JAMES A. TANGDALL, Assistant Superintendent of the Westside Community School District, and KENNETH K. HANSEN, Superintendent of the Westside Community School District,

Defendants.

CIVIL ACTION NO. 85-0-426

**ANSWER OF DEFENDANTS
TO PLAINTIFFS' COMPLAINT**

Defendants allege and state the following for their Answer to plaintiffs' Complaint.

1. Defendants admit Paragraph 1 of the Complaint.

2. Defendants deny that part of Paragraph 2 of the Complaint which alleges that District 66 is managed, governed and controlled by Defendant Wayne W. Meier. Defendants admit all other allegations in said Paragraph 2.

3. Defendants admit that part of Paragraph 3 of the Complaint which alleges that Defendant Wayne W. Meier is a resident of Douglas County, Nebraska, and is the President of the Board of Education of the Westside Community Schools, District 66. Defendants deny all other allegations in said Paragraph 3. Defendants allege the NEB. REV. STAT. §§ 79-452 to 79-455 (REISSUE 1981) do not authorize suit against said Defendant in his individual and official capacity as alleged by Plaintiffs. Defendants further

allege that there exists no other factual or legal basis for suit against Defendant Wayne W. Meier in his individual capacity or in his official or representative capacity.

4. Defendants admit that part of Paragraph 4 of the Complaint which alleges that Defendant James E. Findley is a resident of Douglas County, Nebraska, and is the Principal of Westside High School. Defendants deny all other allegations in said Paragraph 4. Defendants allege that there exists no factual or legal basis for suit against Defendant James E. Findley in his individual capacity or in his official or representative capacity.

5. Defendants admit that part of Paragraph 5 of the Complaint which alleges that Defendant James A. Tangdall is a resident of Douglas County, Nebraska. Defendants deny that Defendant James A. Tangdall is a (sic) Assistant Superintendent, but allege that James A. Tangdall is the Associate Superintendent of Schools. Defendants deny all other allegations in said Paragraph 5.

Defendants allege that there exists no factual or legal basis for suit against Defendant James A. Tangdall in his individual capacity or in his official or representative capacity.

6. Defendants admit that part of Paragraph 6 of the Complaint which alleges that Defendant Kenneth K. Hansen is a resident of Douglas County, Nebraska, and is the Superintendent of Schools for Westside Community Schools. Defendants deny all other allegations in said Paragraph 6. Defendants allege that there exists no factual or legal basis for suit against Defendant Kenneth K. Hansen in his individual capacity or in his official or representative capacity.

7. With respect to Paragraph 7 of the Complaint, Defendants admit that this Court has subject matter jurisdiction.

8. With respect to Paragraph 8 of the Complaint, Defendants admit that venue is proper in this Court.

9. Defendants deny Paragraph 9 of the Complaint.

10. Defendants deny that Plaintiff Bridget C. Mergens is a senior enrolled and attending Westside High School. Defendants allege that said Plaintiff has graduated from Westside High School. Defendants admit all other allegations in said Paragraph 10.

11. Defendants deny that Plaintiff Stephen P. Hollar is currently a junior enrolled at Westside High School. Defendants allege that said Plaintiff has completed his junior year at Westside High School. Defendants admit all other allegations in said Paragraph 11.

12. Defendants deny that Plaintiff Brian P. Rensing is currently a sophomore enrolled at Westside High School. Defendants allege that said Plaintiff has completed his sophomore year at Westside High School. Defendants admit all other allegations in said Paragraph 12.

13. Defendants deny that Plaintiff David K. Harris is a senior enrolled at Westside High School. Defendants allege that said Plaintiff has graduated from

Westside High School. Defendants admit all other allegations in said Paragraph 13.

14. Defendants deny that Plaintiff Andrea Simmonds is a senior enrolled at Westside High School. Defendants allege that said Plaintiff has graduated from Westside High School. Defendants admit all other allegations in said Paragraph 14.

15. Defendants deny that part of Paragraph 15 of the Complaint which alleges that School District Number 66 and Westside High School receive federal financial assistance as contemplated by the Equal Access Act. Defendants admit all other allegations in said Paragraph 15.

16. Defendants admit that part of Paragraph 16 of the Complaint which alleges that Defendant Kenneth K. Hansen is the Superintendent of Westside Community Schools, School District Number 66. Defendants deny all other allegations in said Paragraph 16.

17. Defendants deny Paragraph 17 of the Complaint on the grounds that the allegations contained therein do not accurately describe the request made by Plaintiff Bridget C. Mergens and do not accurately describe the reasons for the denial by Defendant James E. Findley of the subject request.

18. Defendants deny Paragraph 18 of the Complaint on the grounds that the allegations contained therein do not accurately describe the request made by Plaintiff Bridget C. Mergens and do not accurately describe the reasons for the denial by Defendant James A. Tangdall of the subject request.

19. Defendants deny Paragraph 19 of the Complaint on the grounds that the allegations contained therein do not accurately describe the request made by Plaintiff Bridget C. Mergens and do not accurately describe the reasons for the denial of the subject request.

20. Defendants admit that part of Paragraph 20 of the Complaint which alleges that, on March 4, 1985, the Board

of Education voted to uphold the decision of Defendants James E. Findley, James A. Tangdall, and Kenneth K. Hansen. Defendants further admit that Exhibit A to the Complaint is a copy of the minutes of the Board of Education meeting of that date. Defendants deny all other allegations contained in said Paragraph 20 on the grounds that they do not accurately describe the request made by Plaintiff Bridget C. Mergens and the reason for the denial of the subject request.

21. Defendants deny Paragraph 21 of the Complaint.

22. With respect to Paragraph 22 of the Complaint, Defendants admit that Exhibit B is a true copy of a memo dated August, 1984, from Ron Huston to all Homeroom Advisors at Westside High School. Defendants deny all other allegations of said Paragraph 22.

23. With respect to Paragraph 23 of the Complaint, Defendants admit that students are allowed to exchange ideas and express opinions on any topic. Defendants allege that they do not engage and have

not engaged in any content-based discrimination. However, Defendants deny said Paragraph 23 for the reason that they disagree with Plaintiffs' characterization of the freedom of expression and speech permitted by Defendants.

24. Defendants deny Paragraph 24 of the Complaint.

25. Defendants deny Paragraph 25 of the Complaint on the grounds that the allegations are speculative.

26. Defendants deny Paragraph 26 of the Complaint.

27. Defendants deny Paragraph 27 of the Complaint.

28. Defendants deny Paragraph 28 of the Complaint.

29. Defendants admit Paragraph 29 of the Complaint.

30. Defendants admit Paragraph 30 of the Complaint.

31. For their answer to Paragraph 31 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

32. Defendants deny Paragraph 32 of the Complaint. Defendants allege that they did not engage at any time in content-based regulation, restriction or discrimination. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

33. For their answer to Paragraph 33 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

34. Defendants deny Paragraph 34 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

35. For their answer to Paragraph 35 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

36. Defendants deny Paragraph 36 of the Complaint on the grounds that Defendants do not have actual knowledge of Plaintiffs' beliefs.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

39. For their answer to Paragraph 39 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

41. For their answer to Paragraph 41 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

43. For their answer to Paragraph 43 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

45. For their answer to Paragraph 45 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without

knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

47. For their answer to Paragraph 47 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

49. For their answer to Paragraph 49 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity

and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

51. For their answer to Paragraph 51 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

53. For their answer to Paragraph 53 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint. Defendants allege that the

Equal Access Act is unconstitutional because it violates the Establishment Clause, is unconstitutionally vague and is unconstitutional as applied to the facts of this case. Defendants further allege that Westside High School does not have a limited open forum under the Equal Access Act; that there has been no discrimination on the basis of religious, political, philosophical or other content of speech; and that all student groups and organizations at Westside High School are related to the curriculum of Westside High School. Defendants allege that any and all acts of Defendants were performed in their official or representative capacity and not in their individual capacity, were performed in good faith, and without knowledge that any such acts were in violation of any constitutional or statutory rights of Plaintiffs.

55. For their answer to Paragraph 55 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. For their answer to Paragraph 57 of the Complaint, Defendants incorporate by reference the allegations contained in Paragraphs 1 through 30 of this Answer.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint. Defendants allege that Plaintiffs are not subject to immediate and irreparable injury if injunctive relief is not granted.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

WHEREFORE, Defendants, and each of them request that Plaintiffs' Complaint be dismissed and that Defendants be awarded attorney fees and costs pursuant to 42 U.S.C. 1988.

[Defendants]

By:/s/Allen E. Daubman

* * *

(Certificate of Service omitted in printing)

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRIDGET C. MERGENS, et al.,	)	
Plaintiffs,	)	CV 85-0-426
vs.	)	**ORDER ON FINAL PRETRIAL CONFERENCE**
UNITED STATES OF AMERICA,	)	
Intervenor-Plaintiff,	)	
vs.	)	
THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS, et al.,	)	
Defendants.	)	

A final pretrial conference was held on the 26th day of November, 1986. Appearing for the parties as counsel were:

Douglas Veith
PELTON, BERTOLINI, SCHROEDER,
VEITH & O'NEAL
205 Galvin Road North
Bellevue, NE 68005
(402) 292-2800
Attorney for Plaintiffs

(Also appearing is The National Legal Foundation as Co-Counsel for Plaintiffs)

Allen E. Daubman and Verne Moore, Jr.
MCGILL, KOLEY, PARSONAGE AND LANPHIER, P.C.
10010 Regency Circle
Omaha, NE 68114
(402) 397-9988
Attorneys for Defendants

Douglas Semisch
ASSISTANT UNITED STATES ATTORNEY
P. O. Box 1228, DTS
Omaha, NE 68101
(402) 221-4774
Attorney for Intervenor-Plaintiff

A. Exhibits in Evidence. The following exhibits are received into evidence without objection and no formal offer need be made of them:

Plaintiffs' Exhibits No. 1-53, 56-63, 71, 72, 73

Intervenor-Plaintiffs' Exhibits No. None

Defendants' Exhibits No. None

B. Foundation for Exhibits. Foundation for the following exhibits has been stipulated or waived:

All exhibits except 58, 64-70.

C. Uncontroverted Facts. The parties have agreed that the following may be accepted as facts for purposes of this case only:

1) That all Plaintiffs are citizens of Omaha, Nebraska and are or were students at Westside High School, which is a school within the Westside Community Schools, known as District 66.

2) That Westside High School is a secondary school as defined by Nebraska State Law and as defined by the Equal Access Act.

3) That the Westside Community Schools (District 66), is an independent school district, organized and existing under the Constitution and Laws of the State of Nebraska, and is managed, governed and controlled by the Board of Education of the Westside Community Schools.

4) That at the time of the filing of this action Defendant Wayne W. Meier was a resident of Douglas County, Nebraska, and the President of the Board of Education of the Westside Community Schools, District 66.

5) That Defendant, James E. Findley, is a resident of Douglas County, Nebraska and is the Principal of Westside High School.

6) That Defendant, James A. Tangdall, is a resident of Douglas County, Nebraska and is the Associate Superintendent of Schools for Westside Community Schools, District 66.

7) That Defendant Kenneth K. Hansen is a resident of Douglas County, Nebraska and is the Superintendent of Schools for Westside Community Schools, District 66.

8) That jurisdiction is admitted and venue is proper in this Court.

9) That at the time of the filing of this action, Plaintiffs Bridget C. Mergens, Stephen P. Hollar, Andrea Simmonds and David K. Harris were seniors at Westside High School. These four Plaintiffs have subsequently graduated, graduating in June of 1985.

10) That Plaintiff Brian P. Rensing is a senior currently enrolled at Westside High School.

11) That Plaintiffs Michelle M. Harris, Kendra K. Kellison and Kevin Brown are juniors, currently enrolled at Westside High School.

12) That Westside High School received Federal financial assistance for the year ending August 31, 1985 as set forth in Exhibit 73, said Federal financial assistance being paid through the State of Nebraska to District 66 and then distributed as required to the individual schools within District 66, including Westside High School. Westside High School continues to receive Federal financial assistance through the State of Nebraska, said assistance being directed to District 66 and then distributed as required.

13) That in January 1985, Plaintiff Bridgett (sic) C. Mergens met with Defendant James E. Findley and requested permission to form a Christian Club at Westside High School. The club proposed by Bridget Mergens at Westside High School was requested to be idential (sic) in its formation, rights, privileges, terms and conditions as other Westside High School affiliated student clubs, but the Christian Club would not have a faculty sponsor. That Defendant Findley denied the request to form such a Christian Club.

14) That in February 1985, Plaintiff Bridgett (sic) C. Mergens met with Defendant James E. Findley and Defendant James A. Tangdall who informed Plaintiff Mergens that they had discussed the request to form the Christian Club at Westside High School with Defendant Kenneth K. Hansen and that Defendants Findley, Tangdall and Hansen had all agreed that the request should be denied.

15) That on March 4, 1986, Plaintiff Mergens petitioned Defendant Board of Education for permission for the proposed Christian Club to meet at Westside High School. As explained to the Board, by Plaintiff Mergens, the Christian Club would not have a faculty sponsor except as required by School Board policy for custodial purposes. If required, a faculty sponsor would attend in a nonparticipatory capacity only. The Board of Education voted to uphold the denial of Defendants Findley, Tangdall and Hansen for Plaintiff Mergens to form such a club.

16) Westside High School has approximately 30 clubs that meet at Westside High School after school. These clubs generally meet after normal school hours in the Westside High School buildings, and all have faculty sponsors.

17) Plaintiffs and Defendants have agreed that the following ten clubs are ones which Plaintiffs claim are noncurriculum for purposes of the Equal Access Act and Plaintiffs' constitutional claim of right of access to school premises for the Christian Club. By doing so Plaintiffs are not admitting that the remaining clubs are curriculum related as envisioned by the Equal Access Act:

Interact	Welcome to Westside
Chess	Future Business Leaders of America
Subserfers (sic)	Zonta
National Honor Society	Student Advisory Board
Photography	Student Forum

18) That there are no space limitations or time and place restrictions which would prevent Plaintiffs' proposed Christian club from meeting at Westside High School.

D. Controverted and Unresolved Issues. The issues remaining to be determined and unresolved matters for the courts (sic) attention are:

1) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School, violates Plaintiffs' free speech rights under the First Amendment to the United States Constitution.

2) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School, violates Plaintiffs' rights of association and assembly under the First Amendment to the United States Constitution.

3) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School, violates Plaintiffs' free exercise rights under the First Amendment to the United States Constitution and fails to give reasonable accommodation to the Plaintiffs' religious beliefs.

4) Whether the denial by Defendants of Plaintiff's (sic) request to form the Christian Club at Westside High School, in fact violates the prohibition of the Establishment Clause of the First Amendment to the Constitution of the United States against State hostility towards religion.

5) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School violates the Plaintiffs' right to equal protection of the law under the Fourteenth Amendment to the Constitution of the United States of America by discriminating

against the Plaintiffs based solely on the fact that Plaintiffs wish to engage in religious speech.

6) Whether Defendant School Board policy No. 5610 violates the due process clause and equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America in that it is unconstitutionally vague and is unconstitutional as applied to the facts in this case.

7) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School violates Plaintiffs' constitutional rights under the First and Fourteenth Amendments of the United States Constitution thereby also violating 42 U.S.C. § 1983.

8) Whether the denial by Defendants of Plaintiffs' request to form the Christian club at Westside High School constitutes a violation of the Equal Protection Rights Provision of the Nebraska Constitution, Article I, Section 1.

9) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School is a violation by Defendants of Plaintiffs' right to religious freedom under the Nebraska Constitution, Article I, Section 4.

10) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School violates the Equal Access Act, 20 U.S.C. § 4071-4074.

11) Whether the Equal Access Act, 20 U.S.C. § 4071-4074 is unconstitutional.

12) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School is a direct violation of Defendant School Board's Policy 5450. (Short Description)

13) Whether the denial by Defendants of Plaintiffs' request to form the Christian Club at Westside High School is a direct violation of Defendant School Board's Policy 6180.

14) The nature of the forum existing at Westside High School at the time and after Bridget Mergens made her request to form the Christian Club.

E. Witnesses. All witnesses whom the Plaintiffs expect to testify, except those who may be called for impeachment purposes only are:

1. Roxanne Abbot*
2. Anne Breitinger*
3. Sandy Carbaugh*
4. Keven Coates*
5. Davis Harris*
6. Michelle Harris*
7. Lisa Healy*

8. Jennifer Hilt*
9. Rick Hustig*
10. Kendra Kellison
11. Jeff Ramsell*
12. Brian Rensing*
12. (sic) Derek Stoneburg*
13. Kevin Brown*
14. Bridget Mergens*
15. Chris Polen*
16. Steven Hollar*
17. Andrea Simmonds*
18. Wayne W. Meier*
19. James E. Findley*
20. James A. Tangdall*
21. Kenneth K. Hansen*
22. Ron F. Huston*
23. Sandy Skar*
24. Grey Taulborg*

All witnesses whom the defendant(s) expect to call to testify, except those listed in the preceding paragraph as expected to be called by the plaintiffs and except those who may be called for impeachment purposes only, are:

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except impeachment.

F. Expert Witnesses' Qualifications. Experts to be called and their qualifications are:

1) Dr. Ward Sybouts*
Dr. Sybouts is an expert in the field of curriculum development with specialization in School Activities.

2) Dr. Joseph C. LaVoie*
Dr. LaVoie is a developmental psychologist at the University of Nebraska, Omaha Campus.

3) Dr. David S. Moshman*
Dr. Moshman is a developmental psychologist at the University of Nebraska, Lincoln Campus.

G. Depositions and other Discovery Documents.
(1) Depositions, answers to written interrogatories, and requests for admissions or portions thereof which are expected to be offered in evidence by the plaintiff as part of plaintiffs' case-in-chief are:

Complete Deposition of Steven Hollar.

Defendants' answers to Plaintiffs' Interrogatories #1, #2, #3, #6, #7, #8, #9, #10, #11, #12, #14, #17, #23, #24, #27, #28.

Objections by the defendant are: #28 - Relevancy.

(2) All depositions, answers to written interrogatories, and requests for admissions or portions thereof which are expected to be offered in evidence by the defendant as part of the defendants' case-in-chief are: None

Objections by the plaintiff are: None.

H. Length of Trial. Counsel estimates the trial will consume not less than 3 days, not more than 6 days, and

probably about 5 days. The case shall be in readiness for trial after March 31, 1987.

Proposed Findings shall be filed by each side and trial briefs shall be submitted by each side no later than March 31, 1987.

Accepted by the parties the 26th day of November, 1986.

(Names of parties and attorneys omitted in printing)

Approved by the Court his 26th day of November, 1986.

/s/ Richard C. Peck
U. S. Magistrate

(Attachments A, B and C - vitae of Ward Sybouts, Joseph C. LaVoie, and David Moshman - omitted in printing)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

BRIDGET C. MERGENS, et al.,	)	CV 85-0-426
Plaintiffs,	)	
vs.	)	**ORDER IN SUPPLEMENTATION OF PRETRIAL ORDER**
UNITED STATES OF AMERICA,	)	
Intervenor-Plaintiff,	)	
vs.	)	
THE BOARD OF EDUCATION OF THE WESTSIDE COMMUNITY SCHOOLS, et al.,	)	
Defendants.	)	

In confirmation of rulings made at pretrial conference held on November 26, 1986,

IT IS ORDERED:

1. Defendants' objection to inclusion in the pretrial order listing by plaintiffs of ten students to be called as

trial witnesses, who only within the past week had been disclosed to defendants' counsel, is denied.

2. Plaintiffs' motion (filing 102) for leave to designate out of time expert witnesses therein identified is granted.

3. Within ten (10) days from date of this order, plaintiffs shall supplement their answers to interrogatories by defendants setting forth the nature of the testimony sought to be adduced from the ten students and F.R.Cv.P. 26(b)(4)(A)(i) information as to the testimony of the now designated expert witnesses.

4. Defendants are granted leave to designate expert witnesses and to supplement identification of fact witnesses after deposing those fact and expert witnesses which plaintiffs have now been given permission to call.

5. The time within which further deposition discovery shall be accomplished is extended to March 14, 1987.

6. Any amendments required to the pretrial order as may be required by reason of the additional discovery allowed

as provided above shall be filed no later than March 31, 1987; and the case shall be subject to call for trial anytime after that date.

DATED this 26th day of November, 1986.

BY THE COURT,

/s/Richard C. Peck
Richard C. Peck
United States
Magistrate

[12] BRIDGET COLLEEN MERGENS, called as a witness on her own behalf, being first duly sworn, testified as follows:

* * *

DIRECT EXAMINATION

BY MR. VEITH:

[13] Q. Are you the lead plaintiff in this particular case?
A. Yes, I am.

Q. Miss Mergens, in 1985, January of 1985 -- I want to take you back to that time period -- where were you located at that time?
A. I was a student at Westside High School and I lived on 89th and Pacific in Omaha.

Q. And you lived there with your family?
A. Uh-huh.

Q. Did you have a church affiliation or religious affiliation in January of 1985?
A. More or less, yes, I did.

Q. Where were you attending church?
A. Most of the time I was attending Glad Tidings Assembly of God.

Q. As you recall, in January of 1985, what occurred in reference to the facts of this particular case?
A. A friend of mine, Andrea and I, decided that we would like to start a Fellowship Club at Westside and so on a very informal basis I confronted Dr. Findley on that.

Q. When you say "Andrea," is that Miss Simmonds?
A. Yes.

Q. And she is also a plaintiff in this case?

[14] A. Yes, she is.

Q. Okay. When you contacted Dr. Findley, how did you describe the club to him that you wanted to form?
A. I was very uninformed at that time and I simply stated that I would just like to start a -- some sort of a gathering of students who were -- had similar beliefs in God and would like to get together in the morning or after school for fellowship and prayer.

Q. Did you express that desire to Dr. Findley?
A. Yes, I did, sir.

Q. And what did he say to you?
A. He said, to the best of my knowledge, that it was a very good idea but that sort of a club would not be allowed in the school.

Q. Did he give you a reason for why the club would not have been allowed?
A. He said that -- that it did not go exactly with the school system and what the school's beliefs were on that sort of a club.

Q. Back then if Dr. Findley had told you that he would allow you to have a club if you allowed him to post a

disclaimer of the club, would you have gone ahead and formed your club under those conditions?
A. Yes, sir.

MR. DAUBMAN: Objection, speculation, Your Honor.

[15] THE COURT: Overruled. You may answer.

A. Yes.

Q. Would it have been okay with you if Dr. Findley had told you that he would also want to make some sort of an announcement, either in the school newspaper or through the public address system, that the school did not support that particular club? Would that have been okay with you?
A. That would have been fine with me, sir.

Q. Did Dr. Findley suggest any of these two alternatives to you?
A. No, sir.

Q. He just denied your request and stated that it didn't go along with school policy?
A. Yes.

Q. Miss Mergens, would you have allowed anyone to become a member of this particular club?
A. Yes.

Q. Would it have been non-denominational?
A. Yes.

Q. Would you have allowed individuals from other faiths to attend?
A. Yes.

Q. Would there have been any kind of required attendance?
A. Oh, no.

Q. Did any church, pastor or outside group direct you to [16] form or to try to form a Bible Study Club at Westside High School?
A. No, sir.

Q. Who did you envision being members of the particular club?
A. Any students who were interested who wanted to attend. There would be no rigid policy, just anybody.

Q. When you say "any students," you meant Westside High School students?
A. Any Westside High School students.

Q. And did you express that to Dr. Findley, that it would be any Westside High School students?
A. Yes, I did.

Q. Was such a club already in existence in January of 1985 when you first contacted Dr. Findley?
A. No, sir.

Q. Why did you ask permission from him to form the club?
A. He was my home room teacher and he was also the principal of the school so I knew him and I believed that he would be the one -- he would be the first one to contact, to be the first one to confront on a situation like that.

Q. So you were in his home room class?
A. Yes, I was.

Q. And you saw him on a daily basis?
A. Yes.

[17] Q. Why did you feel that you needed to have such a club at Westside High School?
A. I -- I'm a Christian and I believe that every single day of my life is part of my Christian experience and I don't -- I don't leave my Christianity to a certain day of the week like Sunday. I don't leave it at church. It's a day-to-day basis and it's something that I need encouragement in daily.

Q. Are you still a Christian today?
A. Yes, I am.

Q. Do you still attend the same church that you did in January, 1985?
A. No, I don't.

Q. Do you now meet with other Christians on a regular basis in a group?
A. Yes, I do.

Q. What do you do when you meet in the group?
A. Well, we pray and we read the Bible and we talk about things that are going on in our lives and how we can help each other and give advice and give encouragement to one another.

Q. When did this group that you are now a member of first being to meet?
A. A fellowship group type group that I started at the end of March of 1985.

Q. This was after the School Board had --

[18] A. Yes, it was.

Q. Do parents direct or lead the group that you are leading now?
A. No. No.

Q. Do they have anything to do with the group at all?
A. Other than allowing the use of their house, no.

Q. Does your pastor direct or lead this group?
A. No.

Q. Is this the same -- the group that you attend now, is this the same group basically that was started in late March of 1985?
A. It's the same format but very many different people.

Q. Do you have a name or anything for this belief that you need to gather together and share ideas and encourage one another?
A. I consider it fellowship.

Q. And is that something that you find that is a requirement of your Christian experience?
A. Yes, I do.

Q. Now, back to Dr. Findley. At the time that you discussed the formation of the group with Dr. Findley in early 1985, when you said that Miss Simmonds and you discussed this with him or at least you had talked about forming a group, [19]

were there other students besides yourself and Miss Simmonds who wanted to have a group such as you were proposing?
A. Yes, there were. That's why -- that's what gave us the idea to start a group, because there was more than just the two of us. There were many other students.

Q. Approximately how many students were there?
A. Approximately 25, 20 to 25.

Q. How well did you know most of those students?
A. I knew probably half of them very well and the other half I had known through meeting them once or twice or word of mouth.

Q. Did any of them attend your church?
A. At the time, David Harris attended Glad Tidings and so did his sister, Michelle.

Q. But the other 25 or so that you mentioned, they did not attend your church?
A. No, they did not.

Q. Other than David Harris and Michelle Harris, had you ever prayed or attended any religious services with any of these students?
A. Miss Simmonds and I attended a Christian concert together and various other groups with various other kids, I met with them and went to various other things, like youth groups and things like that.

Q. It was nothing organized out of one particular church [20] or anything like that?
A. Oh, no.

Q. When you met with Dr. Findley in early 1985, the first meeting, was that a formal meeting in his office or was that kind of an informal meeting?
A. No. I went in there on a free "mod" and just asked him very casually if -- what he thought of the idea of having a Bible Study Group.

* * *

[21] Q. And when you went to see Dr. Findley the first time, in January of 1985, did you go alone?
A. Yes, I did.

Q. And that's when you discussed the club with him, is that correct?
A. Yes.

Q. Where did you envision this club meeting?
A. Any empty classroom in the morning or after school.

Q. Did you want any special time other than when the other clubs met?
A. No.

Q. Why did you want to meet in the school?
A. We felt it was our right, for one, and we also felt that it would be a lot more convenient for the kids involved.

Q. At the time that you met with Dr. Findley, the first [22] time, had you ever heard of the Equal Access Act?
A. I heard Andrea mention -- Andrea Simmons mention something about it but I don't remember the title ever being used.

Q. How did you then find out more about the Equal Access Act?
A. A friend of mine, Danny Borman (phonetic), told me that that was the name of the Act and I then contacted Mr. Veith and also called -- or a friend of mine called Congressman Daub's office to get a copy of the act so that I could see it for myself.

Q. Was this after your first meeting with Dr. Findley, though?
A. I don't know if all of this took place after our first meeting. I know that that was how I found out about the Equal Access Act.

Q. At the time of -- I guess what I am asking is at the time of your first request of Dr. Findley to form the group, you didn't know me, did you?
A. No.

Q. You came to me afterwards, correct?
A. That's correct.

Q. And when you are talking about "Mr. Veith," you are talking about me?
A. Yes.

* * *

[23] Q. Did you have a subsequent meeting with Dr. Findley or Dr. Tangdall?
A. Yes, I did.

Q. And approximately how long after your first meeting with Dr. Findley did this occur?
A. Probably about a week afterwards. I had found out a little bit about the Equal Access Act and a friend of mine from choir, her name was Gray Taulborg, together we went and discussed it again with Dr. Findley.

Q. And what happened at that particular meeting?
A. We were again denied access.

Q. Did you discuss anything different with Dr. Findley at the second meeting as to what you were hoping to accomplish through the formation of the club?
A. No.

[24] Q. Did you express it any differently to him, that you recall?
A. No, I didn't express it any differently.

Q. What basically was your request? What were you really looking for when you went to see Dr. Findley on those two occasions?
A. I simply wanted to be able to start a group, just not even start an official group, but just have a group of kids that were allowed to meet in the school, on the -- on the campus in non-instructional time and

be able to get together with Christian friends and just have fellowship.

Q. Is that what you said to Dr. Findley?
A. Yes.

Q. And on the second meeting what did he say to you?
A. I believe he contacted other members of the administration by that time and done a little more checking on the Equal Access Act and he said -- he just simply said it would not be allowed and he was sorry.

Q. Did he tell you why it wouldn't be allowed, though?
A. He said that it wouldn't -- it wouldn't comply with the school's policy of allowing religion in school.

Q. Did he mention at all to you the separation of church and state?
A. No. Dr. Findley did not.

Q. But he said it wouldn't be allowed because of religion [25] in the school?
A. Yes.

Q. At that meeting with Dr. Findley, the second one, or even the first one, did he ever suggest to you an alternative meeting place?
A. I believe the second time he -- he suggested, "Have you ever thought about going to the church next door?"

Q. And what was your response to that?
A. I said, "No," I hadn't thought about it and I didn't believe that we would have to go to the church, I believed that we should be able to meet in the school.

Q. So you weren't looking to be treated any differently --
A. No.

Q. -- is that what you are saying?
A. We didn't want to be set apart.

Q. Do you know the name of the church that he is talking about?
A. Yes. It's Countryside Community Church.

Q. And do you know the name of the pastor of the church?
A. No, I don't.

Q. Have you ever met him?
A. No.

Q. Did you ever attend church there?
A. I had a piano recital there once when I was a little kid. That's all I remember about the church.

[26] Q. You are not a member of that church then?
A. No.

Q. To your knowledge, were any of the young people, the 25 or so that were interested in forming the club at Westside High School -- to your knowledge, were any of them members of that church?
A. No, not to my knowledge.

Q. Do you know if the church is the same denomination as yours?
A. No, it's not.

Q. Do you have any contacts at all with that particular church?
A. No.

Q. And when you made your request to Dr. Findley for forming the club, you were merely looking for a place to meet within the school, is that correct?
A. Yes, I was.

Q. What about the use of bulletin boards? Would you have wanted to use the bulletin boards?
A. At that time, that wasn't at all on my mind. I simply wanted a place to meet. It wasn't something that had come into question because we weren't allowed to meet, so we didn't think about those things.

Q. What about the use of the intercom system or even the school newspaper to set forth the club, its meeting time, [27] and place?
A. Up until today I didn't know Westside really had a P. A. system because I don't remember it ever being used when I was a student there, and as far as the newspaper, that never came to my mind either.

Q. What about teacher sponsorship? Did you request teacher sponsorship of this particular group?
A. No, I did not.

Q. Had anybody ever indicated to you that they might be willing to sponsor the group?
A. There were teachers, after I found out more about the Act, where it said that a teacher must be present at all meetings -- there were teachers who said they would be willing to be present, just to monitor, just to make sure that nothing went wrong in the school.

Q. Did you tell Dr. Findley about some of those possible teachers at any time?
A. No, I don't remember telling him.

Q. And you don't know if he talked to any of the sponsors, do you?
A. Any of the--?

Q. Any of the potential sponsors of the club, do you know if he talked to any of them?
A. I don't -- I don't know. I didn't ask him.

Q. Why didn't you ask for a faculty sponsor, [28] Miss Mergens?
A. I didn't feel like it was necessary. We -- we didn't want to have a -- a big deal. We just wanted to have a simple gathering place, just a place to meet. It wasn't anything extensive that we had in mind.

Q. Did you want the group to be during non-instructional time, is that correct?
A. Yes, I did.

Q. And you also wanted it to be, again, non-denominational correct?

A. Yes.

Q. So did it really matter to you whether a teacher sponsor was present during the meeting time with your group?
A. No.

Q. You hadn't really considered that?
A. No.

Q. If the school had required a teacher sponsor, if Dr. Findley had said to you, "You can meet but you have to have a teacher sponsor present for that particular club," would that have been okay with you?
A. Yes.

Q. You wouldn't object to that?
A. Yes. I would have been very willing to oblige whatever the school policy was.

Q. Did you ever have an opportunity after your meetings [29] with Dr. Findley to discuss the Fellowship Club that you were proposing with Dr. Tangdall?
A. Yes, I did.

Q. About how long after your second meeting with Dr. Findley did that take place?
A. Probably three to four days, somewhere in that time frame. I was called out of home room to come upstairs to the -- to the office, the main office, and I found Dr. Tangdall there and he mentioned to me that he had heard what was -- what I had requested and he explained to me clearly how he felt

about letting in a group like that in the school and he stated that it would -- because of separation of church and state that we would not be allowed to meet on the campus.

Q. You said he discussed why. Is that all that he really talked about, was the separation of church and state or did he give you any other reasons?
A. Yes. That is what stood out in my mind, is he stated it was not being -- it would not be in accordance with the separation of church and state.

Q. And that is clear to you as the reason that he gave for denying the club?
A. Yes.

Q. Did he indicate to you whether that was his opinion or the opinion that he had received from someone else?
A. He -- he stated with the authority that it was the [30] school, it was the school's opinion.

* * *

Q. Jumping back to Dr. Findley the first time that you spoke to Dr. Findley about the club in January of 1985, he gave you a response right away, didn't he?
A. Yes, the first time.

Q. He denied you the club the first time?
A. Yes.

Q. And then you had a second meeting about a week later. Did he at that second meeting give you any indication that he had received legal counsel concerning the club?
A. No.

Q. That he had sought any other advice from an attorney?
A. No, sir.

Q. Or from legal counsel for the school?
A. No.

Q. Did Dr. Findley or Dr. Tangdall ever inform you of your right to appeal their decision to the School Board?
A. Yes, I believe they did. I asked them how -- would there be any way that I could check out any further the possibility of us meeting in the school and they said that the next level was the School Board.

* * *

[31] Q. After your last meeting with Dr. Tangdall and Dr. Findley, what happened next?
A. We prepared to go to the School Board after that time.

Q. Did you in fact then go to the School Board?
A. Yes, we did.

Q. And did you present a request at the School Board to be able to form the Fellowship Club that you had been speaking of?
A. Yes.

* * *

[32] Q. And do you recall what the decision of the School Board was?
A. They again upheld the decision and denied us access.

Q. This was in March of 1985?
A. It was March 4th, I believe.

* * *

Q. You stated that after the denial in March, finally, [33] of the School Board that you became involved in a group. Did this group meet outside of Westside High School?
A. Yes, sir.

Q. And where did it meet?
A. It met ~~at my~~ house.

Q. Who made up the group? What sort of individuals attended that group?
A. Students -- students from all over, different schools. There were some students from Benson and some students from Westside and students from UNO, even.

Q. Where did this particular group meet?
A. It met at my house.

Q. And when did it meet?
A. At 7:00 o'clock on Tuesday night.

Q. What was the purpose of that particular group?
A. The same purpose, to have fellowship.

Q. And did it always meet at your house?
A. Not through the entirety of the -- of the life of the club or the life of the group or whatever. It met for three months at my house and then it moved to Andrea Simmonds' house.

Q. Is the group still going on today?
A. Yes.

Q. That's the one that you talk about --
A. Yes.

[34] Q. -- that you still are a member of?
A. Yes.

Q. Did the same people who had expressed an interest in the club at school, the Westside students that wanted to form the club, did they also participate in this group at your home?
A. No. Many of them couldn't come because of work schedules and other extra-curricular activities. They couldn't make it.

Q. Had the group been permitted to meet at school, would they have been able to come to that meeting at school?
A. The Westside High School students would have but not the other students that weren't Westside High School students.

Q. And you weren't intending to bring other students from the outside into the Westside High School group, were you?

A. No.

Q. Miss Mergens, do you know for a fact whether other students in the Omaha area meet at schools in groups similar to what you are proposing?
A. Yes, sir. Many different schools.

Q. What are some of the schools where these groups meet?

* * *

[35] A. Papillion High School, Bellevue East and Bellevue West, Burke. Central had a group. I don't know if they still do. And Benson had a group.

Q. Did these groups meet in the school?
A. Yes, sir.

Q. After school?
A. Before or after school.

* * *

Q. Let's take a look at Choir. What did you have to do to be a member of the Choir Club?
A. You had to be a student in Choir. If you weren't -- and you were also required to attend various performances and if at all possible you were required to go on tour, which is at the end of April, and if you couldn't attend all those things, then your grade was docked a little bit in Choir.

Q. So there was a Choir class, an actual core class, that you got a grade in?

A. Yes, sir.

Q. And then there was a Choir club, as you understand it, [36] also?
A. I -- I understand it to be a club because it was represented on Club Fair Day.

Q. And so did you meet after school in this Choir Club and practice, go to recitals and the like?
A. Non-instructional time. We usually had concerts three or four times a year -- on Tuesday nights at 8:00.

Q. And if you did not attend these concerts or a certain number of them, did that affect your grade?
A. Yes, sir.

Q. It would give you a lower grade?
A. Yes. He was very strict on attendance at the performance.

Q. And when you say "he," who was that?
A. Mr. Schuler (phonetic).

* * *

Q. You also said that you were in Drama, is that correct?

[37] A. Yes, sir.

Q. Now, was there a requirement to attend Drama Club?
A. No, sir. It was totally whoever wanted to come or was willing to come were allowed to come.

Q. Did you get a higher grade in any of the dramatics types of classes because you were a member of Drama Club?
A. No.

Q. Was there any required attendance at Drama Club?
A. No.

Q. No attendance taken there at Drama Club?
A. No. If there was any attendance taken, it was taken by us. I was an officer in Drama Club my senior year and we pretty much made the different decisions on who was there and if they weren't there and what they were going to do for candy sales and how to get them the candy and all that sort of thing, and that was basically how we arranged that.

* * *

Q. Did that particular club have a sponsor?
A. Yes, sir. It was --

Q. What was the sponsor's name?

[38] A. Larry Fortney.

Q. And did he attend all of the club meetings and the like?
A. No, sir. He had a daughter who was in a car pool who he always had to go and get and sometimes he would come back and lock up after we were done.

Q. So he just kind of left you there to do your thing in Drama Club?

A. Yeah. We, as the student leaders, led the groups, organized them unless Mr. Fortney had an announcement to make or anything along those lines.

Q. What sort of things did you do in Drama Club?
A. Most of what the club was was a party club. They would have parties on different holidays and the only thing formal that we did was one of the junior high or elementary schools had asked us to do Parent-Teacher Day and Student Day, Family Day, at Swanson Elementary for Christmas where we would perform some skits, and not all the members of Drama Club did that. Just a few.

Q. Did you actually take a course in high school known as Drama where you got a grade?
A. Yes, I took that the first semester of my junior year, I believe.

Q. And then you were in Drama Club your senior year?
A. The end of my sophomore year, the second semester [39] of my sophomore year, my whole junior year, and my whole senior year.

Q. In fact, was there any similarity, Miss Mergens, between Drama Club and the Drama class that you were in?
A. No.

Q. Were there any people in Drama class that were not in Drama Club?
A. Yes.

Q. Were there people --
A. Quite a few.

Q. Quite a few?
A. Yes. There was probably a class, one class or two Drama classes of 20, and Drama Club had about 80 people in it.

Q. Were the [sic] any people in Drama Club that were not in Drama class?
A. Yes.

Q. And were you one of those your senior year?
A. I wasn't in a Drama class my senior year at all.

Q. But you were still in Drama Club?
A. Yes.

Q. How often did the Club meet, Miss Mergens?
A. About once every three to four weeks.

Q. And were you required to actively participate in whatever the Club did?
[40] A. No. It was free. If the students wanted to participate in the various activities, they were allowed to, and if not, if they didn't want to, they didn't have to.

* * *

Q. While you were at Westside High School during those three years, do you ever recall being in classroom situations which required attendance where controversial subjects were addressed?

A. Yes, sir.

Q. What are some of the controversial subjects that were brought out in the classroom?

* * *

A. Particularly in Sociology my senior year we talked about abortion and family planning and just various child cases or various child -- things like adoption and such, and in History my junior year, Advanced Placement History, we talked about anything from drugs and sports to -- (laughing) [41] anything. We talked about everything in that class. Whenever there was a controversial subject on television, it was brought up in class by the teacher.

Q. Were you free in these two classes to exchange your ideas and your opinions on these controversial subjects?
A. Yes.

Q. Do you ever recall any outside speakers being brought in to discuss these controversial subjects?
A. In Sociology my senior year, Planned Parenthood was at the school for a whole day and you were required to attend one -- one module, "mod," for the entire 40 minutes for a presentation from them.

Q. Did you attend that that year?
A. Yes, sir.

Q. And what went on in that module?
A. They explained various forms and devices of birth control and they showed everybody everything and discussed the best forms of birth control and the lease effective and things like that.

Q. Were these explained to you in a way that you then had the decision to weigh whether or not you wanted to use any of these birth control methods or not?
A. Yes, sir.

Q. Do you know why they were allowed to come in to the school?

[42] A. We were on a marriage unit and we were discussing -- you had to take a quiz on all these forms of birth control. You had to pick one form and you had to take a quiz on it and if you failed the quiz, you and your marriage partner in that class were pregnant and you had to arrange for a child in your family and budget, and that was what the family unit was on in Sociology.

Q. Was every student at Westside High School required to attend one of these modules when Planned Parenthood came to the school?
A. No, sir, only the students in Sociology.

* * *

Q. Miss Mergens, in these time periods where controversial subjects were discussed, do you ever recall a particular teacher taking a stand on one side or the other?
A. Yes. In -- I don't remember in Sociology any of the teachers taking a stand, but in A.P. History, the two A.P. teachers would take a stand on anything that you wouldn't take a stand on, they'd take the other side and they'd -- I [43] don't know if it was for the sake of argument or for just the sake of what they really believed.

Q. They didn't express why they were taking the other side, but they would always take the other side then you?
A. Sometimes they would. Sometimes they would take your side as long as there was somebody to argue against.

Q. What kind of subjects in A.P. History? The ones that you named off before? Drugs? Sports?

A. We talked about church and state issues. We talked about issues dealing with just various cases. We would touch on cases once in a while, like the one with the black arm bands in Vietnam protesting. We talked about that, and I wish I could remember all the things we talked about -- just anything daily, you know, daily in the paper.

* * *

CROSS EXAMINATION

BY MR. DAUBMAN:

* * *

Q. Miss Mergens, let me first touch on some of these controversial subjects that occurred in the A.P. History, for example. When the controversial subjects were discussed, was [44] a teacher always present?

A. Yes, sir.

Q. Was it brought up in the context of what was being done in that particular course that day, in connection with the class and curriculum as opposed to an outside activity?

A. It was presented -- the class was a discussion class and it was presented as a topic for discussion. Sometimes we wouldn't even get to our real discussion that we were having for the day, but he did give -- I remember in particular my second semester teacher -- did give credit for who would get involved in the discussions, simply for the sake of discussion grades.

Q. The greater the participation, the better the grade?

A. Right.

Q. You say, "A.P. History." That stands for Advanced Placement History, is that correct?

A. Yes, sir.

Q. Is it your understanding that students placed in Advanced Placement History are the more advanced students in terms of higher academic performance at the high school?

A. It was a choice by the student made, whether they wanted to be a part of A.P. History or A.P. anything, Advanced anything. It was up to the student to decide. There was counsel given by college counselors and their own personal counselors.

* * *

[45] Q. In connection with the Planned Parenthood "mod" that you attended and the other things that were going on with the birth control discussions and so forth, was that in the context or in connection with the Sociology class?

A. Yes, sir.

Q. Was that under supervision of a faculty member at all times?

A. I don't -- I don't think that the faculty member was present at all times, especially during the lunch periods.

Q. When the Planned Parenthood people were talking?

A. Yes, sir.

Q. Okay. I am talking other than the times when the Planned Parenthood people were talking, when you were having these other activities in connection with your marriage unit

or family unit is Sociology, was that at all times conducted by a teacher --
A. Yes, sir.

Q. -- at Westside High School?
A. Yes, sir.

Q. That was present at all times?
A. Yes.

* * *

[46] Q. I wanted to get straight in my mind, Miss Mergens, exactly what went on at the high school from your perception when you were there with regard to the clubs, other clubs, at the high school. To your knowledge, did all of the other clubs at the high school have faculty sponsorship?
A. Yes, sir.

Q. To your knowledge, did all of the other student clubs at the high school use the school facilities?
A. Yes.

Q. And did those clubs meet at the school on a regular periodic basis?
A. Yes.

Q. Did those clubs have access to school bulletin boards to announce activities and meetings and so forth?
A. Yes.

Q. You also mentioned in your testimony something called a Club Fair, is that right?
A. Yes, sir.

Q. Could you explain to the Court what the Club Fair was when you were at the high school?
A. It was something that was in September usually for -- it was for the sophomores' benefit, brand new students in the school. It was for their benefit --

Q. Let me interrupt you there. This would have been [47] towards the very beginning of the school year?
A. Yes.

Q. All right, I'm sorry. Go ahead.
A. Approximately in September, and it was used as a way of -- of showing the clubs and showing what they do to students. It was -- it would go on all day long and students were free to go in and look around at the different displays that each club had, and that was only for sophomores who were really interested in finding out about a new club, and it was -- it was organized by students in the clubs who would be present during the whole day, whenever they were free they would take over and monitor the booth.

Q. Are club activities that are ongoing or that occur over the last year reported on occasion in the student newspaper at Westside High School?
A. The activities?

Q. Yes.
A. Advertisements for them or -- ?

Q. No. Just reports on an activity that the club did last week at the football game, something along those lines?
A. Yeah, I believe so.

Q. And were club activities over the year reported in the high school Year Book at Westside?
A. Yes, sir.

Q. When you first met with Dr. Findley, did you have a [48] club organized at that time?
A. No, sir.

Q. If I understand your testimony, you had a group of people who thought they might be interested if you could get something off the ground, basically?
A. Yes.

Q. Was the club that you were proposing to Dr. Findley to be a Christian Bible Study, Fellowship Club?
A. It would be centered around the Bible. It wouldn't be restrictive. It wouldn't be only open to people who were Christians. It would be open to anybody who considered themselves whatever, who considered themselves even an atheist or another religion or a Hindu or whatever.

* * *

[50] Q. How often did you intend to meet?

A. Intend? Probably once a week or whenever we would be allowed. I would preferably say once a week.

Q. So you envisioned your club would be meeting once a week?
A. Yes.

Q. Either before or after school?
A. Yes.

Q. In a classroom inside the school?
A. A classroom or an area or any place where we could be allowed.

Q. Is it true that you had requested of Dr. Findley and Dr. Tangdall and the Board of Education that you be allowed to form this club at Westside High School and that the club would be identical in its formation, rights, privileges, terms and conditions as other clubs at Westside High School except that it would not have a faculty sponsor?
A. It would -- if the school had desired for us to have [51] a faculty sponsor, if they required that, we were -- we were willing to go with that but at that time I didn't -- I didn't consider having a faculty sponsor because we weren't to the point of having an allowed club to meet.

Q. Was it your request of Dr. Findley and Dr. Tangdall and the Board of Education that your club be identical in its formation, rights, privileges, terms and conditions as the other clubs at the high school?
A. Yes, sir.

Q. Except that you would go either with a faculty sponsor or without a faculty sponsor, as the School District may choose?
A. Yes.

* * *

[52] Q. Were you requesting that your club be officially sanctioned and sponsored by the high school, that it be a high school club like the others?
A. It wouldn't have -- it wouldn't have to be a big deal where it was the Westside High School Bible Study Group. That wasn't our intent. Our intent was to start a group where we could meet, use the building. It was not -- we had not a chance to think that far ahead, because we weren't allowed.

Q. If it would have been acceptable -- or would it have been acceptable to you if the School District would allow your club to meet but would deny you the right or your club the right to use the bulletin boards to make announcements concerning the formation of your club and the meetings of your club?
A. Yes, sir, that would be fine.

Q. Would it have been acceptable to you if the school had denied or prohibited any coverage of your club in the Westside High School Year Book?
A. Yes.

Q. Would it have been acceptable if the school denied or prohibited any coverage of your club in the student [53] newspaper?
A. Yes.

Q. Would it have been acceptable to you if the school would deny your club from participating in the Club Fair?
A. Yes.

Q. If those requests had been made of the School District, would you view that as being a hostile reaction to your religious beliefs?
A. No, I don't believe it would be.

Q. Do you know of other Christians at Westside High School?
A. Yes, sir.

Q. And a number of these expressed some interest to you, either directly or through others, to be a part of this club if it were formed?
A. Yes, sir.

Q. Did you discuss religious topics at the high school with other students of yours at the time?
A. Co-students, yes, sir.

Q. Were you ever prohibited by any member of the administration or faculty of the high school or the staff from discussing religious matters with your students -- with your fellow students?
A. Not on an informal basis.

Q. I am excluding from my questions here the club that [54] you were requesting.

A. No, sir.

Q. Except for the club, were you ever denied the opportunity to discuss religious matters with your fellow students at the high school?

A. No.

Q. Other than possibly the denial of your request of the club, were you ever discriminated against, in your mind, by the administration or faculty or staff at the high school for your religious beliefs?

A. Not directly. I'm not saying by the administration because they were totally clean about discrimination. They weren't discriminating against me about my religious beliefs. Teachers who I was close to, mostly History and Political Science and Social Studies teachers, poked fun and jabbed and that was totally fine with me. It wasn't in an outward discrimination sense.

Q. Were you ever prevented, other than through the requested club, from exercising your religious beliefs by the administration of the school?

A. No.

Q. Were you ever prevented from exercising any of your rights of free speech except possibly the denial of the requested club?

A. Not other than the denial of the club. No.

[55] Q. Did Dr. Findley ever express to you any bias against religion that he had personally?

A. Not personally, he didn't.

Q. Did he ever express any bias against religion to you from the standpoint of the administration of the School District?

A. It wouldn't be a -- it wouldn't be a bias. It would be a -- it wouldn't be a direct bias, no.

Q. Did Dr. Tangdall ever express to you any bias against religion from a personal standpoint or from the standpoint of the school?

A. No, sir.

Q. Did Dr. Findley suggest to you that arrangements could possibly be made for your group to meet at the Community Church next door to Westside High School?

A. He suggested that I look into it but he never offered personally to go after that idea.

Q. If the School District through Dr. Findley or others had made arrangements for your group to meet either immediately before school or immediately after school at the West Side Community Church, would that have been acceptable to you and your group?

A. No, sir.

Q. Why would it not have been acceptable?

A. We didn't believe it was our right to have to be set [56] apart as a club. We wanted the same rights that other students had. I wanted the same rights that I had in my other clubs. I wanted the convenience that I had in my other clubs.

Q. Could you describe for the Court the location of the West Side Community Church in relation to the location of Westside High School?
A. It's across an access road that teachers use as parking and travel. It's across the access road from the guidance doors of the church.

Q. The guidance doors of the high school?
A. Of the high school, yes, sir. Thank you.

Q. Are the two buildings within a hundred feet of each other?
A. Yes, sir.

* * *

[58] Q. I will take you back to the meeting with the Board of Education. Was the Board of Education requested by you and Mr. Veith to allow your Christian Bible Study Fellowship Group to be a student club at Westside High School that would be the same as the other clubs at the high school except that it would not have a faculty sponsor?

* * *

A. We didn't restrict it to that. We were willing to have anything that the school wanted. We didn't require that it did not have a sponsor and we didn't require that it did have a sponsor. We were free to whatever the school system would require.

Q. Let me ask it then without the part relating to the faculty sponsorship. Was the request that was made by you and Mr. Veith of the Board of Education that you be allowed to have a Christian Bible Study Fellowship Club at Westside High School that was the same, and on the same terms and [59] conditions as the other student clubs at the high school?
A. Yes, sir.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

Q. Miss Mergens, looking at the sponsor, now you said you were in I believe Choir and Drama Clubs, is that correct?
A. Yes, sir.

Q. And Choir, the sponsor was who?
A. Mr. Schuler. Mr. Don Schuler.

Q. And did he attend all of the functions that you in Choir attended?
A. Yes, sir.

Q. He was there all the time?
A. Yes, sir.

Q. And he took attendance?
A. Yes.

Q. And he directed the Choir Club or the Warrior Voices or whatever?
A. Yes, sir.

Q. How about in the case of Drama Club? Did the Drama Club sponsor all of the functions of the Drama Club?
A. No, sir.

[60] Q. Did he direct the activities of Drama Club?
A. No, sir. They were student-organized and student-arranged. We had -- we'd visit places. Students would arrange where we could go visit places, like the Omaha Community Playhouse or things like that, and it was totally student-run.

* * *

[61] Q. Mr. Daubman asked you a few questions relative to your meeting with Dr. Findley and whether or not you requested or would have wanted the use of the bulletin boards. Going back to the initial meeting, when you first met with him, had you even thought about the use of the bulletin board?
A. No, sir.

Q. Had you thought about the use of the intercom which doesn't exist but --
A. No, sir.

Q. Had you thought about putting things in the newspaper?
A. No, sir.

Q. Had you thought about the Year Book?
A. No.

Q. What were you really looking for?
A. A place to meet.

Q. A place to meet at Westside High School?
A. At the high school, on campus.

Q. During the same time period that other clubs were meeting?
A. Yes, sir.

* * *

[62] Q. So the denial that you received from Dr. Findley and Dr. Tangdall, as you understand it, was only for the reasons they gave you, it didn't fit school policy and in Dr. Tangdall's case it violated separation of church and state, is that right?
A. Yes, sir.

* * *

[63] Q. If the school had or the School Board or Dr. Findley or Dr. Tangdall had required a sponsor, would that have been okay with you?
A. Yes.

Q. You wouldn't have had a problem with that, right?
A. No, sir.

Q. Okay. Would the sponsor that was provided by Dr. Findley or Dr. Tangdall in your view as you were forming this club have directed the activities of the club?
A. No, sir.

Q. Who did you expect to direct the activities of the club?
A. Students, simply like any other club that I was ever involved in that was not Choir. Other than Choir, all the arrangements were made by the students. It would simply be the same format as that.

Q. What would you expect the sponsor to do?
A. Be there as a -- as a school requirement and be there as somebody to observe and monitor, make sure that the students didn't tear up the room or the building or anything.

Q. Would that be any different than the sponsor that [64] you had in Drama Club?
A. No, sir.

* * *

RECROSS EXAMINATION

BY MR. DAUBMAN:

Q. Did your group of fellow students after the request was turned down ever meet at the high school to discuss religious matters?
A. No, sir.

Q. Why not?
A. Because we didn't have the same open "mods," quote, unquote. The students -- the way that the system is scheduled at Westside, students very rarely, especially sophomores, juniors, and seniors, have the same time free together. There would have been no way that all the kids

could have gotten together at the same time. Mostly any conversation about any religious matters was one one on one or two on two or about four or five kids at the most.

Q. Is the school open prior to the very beginning of home room?
A. Yes, sir.

Q. Okay. For how long a period of time?

[65] A. I used to come in on weekday mornings at about 6:30 or 7:00 when I was a sophomore.

Q. And what time did home room start?
A. 8:00 o'clock.

Q. During that period of time after your request for the club was denied, did you ask or did you get together with your fellow students to discuss religious topics?
A. No, sir.

Q. Why not?
A. Because it would have been almost like sneaking around behind the administration's back and we didn't want to -- we didn't want to be rebellious against the system. We didn't want to be anything but under the -- we didn't want anything to be without the knowledge of the school system because that wouldn't have been fair to the administration. That wouldn't have been fair to the system if we thought that we were going to organize something anyway.

* * *

[66] A. It depends on what your definition of a sponsor is. The sponsor would not be a person in the -- in the authority as to lead and such as my Drama sponsor -- or as my Choir sponsor was because he led and directed all of the student activities.

Q. I read too far. Except for the last clause dealing with "but the Christian Club would not have a faculty sponsor," do you agree or disagree with the statement I read?
A. I agree with that, yes, sir. I agree with that.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

Q. Miss Mergens, do you ever recall Dr. Findley or Dr. Tangdall having stated to you or in your presence that if you had just gone ahead and met and not said anything to anybody, that this whole thing wouldn't have happened and we wouldn't have a case here today or it wouldn't have gone as far [67] as it had gone?
A. Yes. Dr. Findley mentioned that to me. I don't know if it was a big formal statement or if it was just, "Well, if you wouldn't have said anything to us, it would be okay."

Q. If you just hadn't said anything and gone ahead and met --

A. Right.

Q. -- some place in the school?
A. Exactly.

Q. And why didn't you do that?
A. Because we felt that they should know. If we were going to be using the school and the facilities and all that stuff and meeting on a formal basis, we thought that the administration should know or that we should ask for permission because it's their school that they lead and organize.

* * *

[68] **ANDREA DAWN SIMMONDS,** called as a witness on her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[69] A. I graduated from Westside in June of 1985.

Q. And what high school did you attend at that time?
A. Westside High School.

Q. How long were you a student at Westside?
A. I was a student for three years.

Q. So you were a student from your sophomore year on until you graduated as a senior?
A. That's right.

* * *

[70] Q. I want to take you back a little bit, back to early 1984, perhaps even a little earlier. Do you recall at any time prior to the institution of this action ever talking to Bridget about forming a Bible Club at Westside High School?
A. Yes, I did.

Q. And when was that?
A. The fall of 1984, probably September, October.

Q. And in those discussions with Bridget what was the conversation, what type of discussions did you have, what did you discuss?

[71] A. Well, we were just discussing that there were several students at Westside that were Christians and were interested in having a group and we wondered if it would be possible to have a club or some sort of group that could meet after school at Westside.

Q. About how many people at that time were interested in having a Bible Club?
A. To my knowledge, I knew about ten.

Q. What did you discuss would be the purpose of the Club?
A. Mostly just have fellowship, and as a Christian that means reading the Bible, prayer, just talking about things that were important to us as Christians.

* * *

[72] Q. What type of a fellowship group did you envision having at Westside High School?
A. One that would meet after school or before school at the school in a classroom or somewhere.

* * *

Q. What type of activities did you want to engage in?
A. Fellowship, prayer, and reading the Bible and just discussing topics.

* * *

[73] Q. Now, the club that you and Bridget spoke about, was this to be open to anyone that wanted to attend?
A. Yes.

Q. But it would be open to any student that wanted to attend, is that correct?
A. That's correct.

Q. Why did you want to form a Bible Club at Westside?
A. I just had that need for me as a Christian to have fellowship because that's a real important part of my Christianity, just being able to be encouraged by other Christians, and so that's mostly what I wanted to get out of it.

* * *

[74] Q. Did any organization ask you to start a group at Westside High School?
A. No, sir.

* * *

[75] Q. Do you recall ever hearing any conversations with Bridget -- or during any of your conversations with Bridget any discussion about the opportunity or arrangements to meet [76] next door at the church?
A. Yes. She had said that Dr. Findley had suggested that to us.

Q. And what was your response to that?
A. I thought it would have been inconvenient for me because I usually worked in the evenings and I would have to have gone over there -- if it had been in the evening, I would have had to get a ride there and I would have been working and I also felt that they -- that they weren't giving us our rights since other clubs were meeting in the school and I thought we should be able to just meet in the school and not have to go across the street.

* * *

Q. What time of the day would you have anticipated the Bible Club meeting at Westside High School?
A. Before or after school hours.

Q. Did you anticipate having a faculty sponsor?

A. No. Actually, I hadn't thought about it. It didn't [77] matter one way or the other whether we did or not.

Q. If Dr. Findley or any other administrator had told you that you were required to have a faculty sponsor, would that have been okay with you?
A. That would have been fine with me.

Q. What was your impression of what a faculty sponsor would do?
A. Someone just to monitor the club and not to be involved in it but just to make sure that we were behaving ourselves.

Q. Did you anticipate having your Bible Club treated in the same way as any other club at Westside?
A. Yes, I did.

Q. Did you anticipate being able to use the bulletin boards or any other kind of inner-school communication system?
A. Yes, sir.

Q. Who was going to direct and lead the activities of the Bible Club?
A. The students that were involved.

Q. Were your parents or pastor asking you to be involved in that club at all?
A. No.

Q. Were they asking you to start a club at all?
A. No.

Q. Did you anticipate that your parents or your pastor [78] would be involved in the club at all?
A. No, I didn't.

Q. Why did you and Bridget feel that you needed to ask permission to meet for Bible Club purposes at Westside?
A. We just felt that we wanted to be above board and not do anything behind the administration's back. We wanted to clear it with them first.

Q. Do you recall how many students were interested in forming a Bible Club?
A. I knew probably about ten that were interested.

Q. Now, when you attended Westside were you a member of any other club or group that met as a school club?
A. Yes, I was in Choir and also in the International Club.

Q. Now, we will just talk about Choir here for a few minutes. As a part of the Choir Club -- first of all, tell me what Choir Club was.
A. Warrior Voices was a club and it also met, it was a class during the day but we also had times of concerts and practices outside of the class and it was considered a club. We had fund-raisers and things for the club and officers of the club and it was just a singing club where we did performances at places.

Q. And I take it Warrior Voices was the same as the Choir Club?

[79] A. That's right.

Q. And were you a member of Choir class at the same time?
A. Yes, I was.

Q. Who was the faculty -- or was there a faculty sponsor at Choir Club?
A. Yes, there was.

Q. And who was that?
A. Dr. Schuler. Mr. Schuler.

Q. Excuse me, I didn't hear you.
A. Mr. Schuler.

Q. Who was the teacher of the Choir class?
A. Mr. Schuler was.

Q. Were you graded at all for your participation in Choir Club?
A. Yes, for the performances were required and you could miss so many but you were encouraged not to miss any or your grade would be docked.

Q. So was attendance taken then at Choir Club?
A. Yes, it was.

Q. Was Choir Club restricted to students at Westside High School?
A. Yes, it was.

Q. Now, what type of activities did you do in Choir class?
A. We just sang.

[80] Q. Now, did Choir class meet at a different time than Choir Club?
A. No. They were together.

Q. Were some members of the Choir class -- were there any members of the Choir class who were not a member of the Choir Club?
A. There were different Choir classes and Warrior Voices was one. There were different choirs. There's a Glee Choir for sophomores, and so not all of the people in the Glee Choir were members of Warrior Voices but all the ones that were in the class of Warrior Voices were in Warrior Voices Club.

Q. Now, the faculty sponsor of the Choir Club, did he direct the activities of the Choir Club?
A. Yes, he did.

Q. And actively participate in all of the activities?
A. Yes, he did.

Q. And was he in attendance at all of the activities?
A. Yes, he was.

* * *

[81] Q. Can you tell me a little bit about what types of activities you engaged in in the International Club?
A. The Club was mostly structured to expose you to different cultures around the world and also to raise money for international students that were coming to Omaha or else students that were at Westside that wanted to go abroad.

[82] Were you required to attend that club?

A. No.

Q. That was a strictly student voluntary club?
A. That's right.

Q. Were you attending any other class at that time that related, in your opinion, to that Club?
A. I was taking Spanish at that time but it wasn't required in the class.

Q. What did you do in Spanish class?
A. We learned Spanish language.

Q. Did you have a faculty sponsor in the International Club?
A. Yes, we did.

Q. And who was that?
A. Mrs. Shote (phonetic) and Mrs. Davis.

Q. Pardon me?
A. Mrs. Shote and Mrs. Davis.

Q. What classes did Mrs. Shote teach, do you know?
A. She taught Foreign Language.

Q. And what about Mrs. Davis?
A. Mrs. Davis taught Spanish.

Q. Were they in attendance at all the club meetings?
A. Yes, they were.

Q. Did they actively participate in all of the club meetings?

[83] A. No. They mostly just sat and took attendance and there were officers of the club that mostly ran the club. They just were there to watch.

Q. Who were the officers?
A. Students.

Q. So the students directed the activities of the club?
A. That's right, yeah.

Q. Were any of the activities conducted off school campus or were they all on the school campus, the school ground?
A. Not to my knowledge, no.

* * *

Q. They were not off campus. While you were a member of the International Club do you recall ever having been given a credit in Spanish class for receiving a grade in Spanish class for having attended the International Club?
A. No.

Q. Did you receive a credit in any other class for having attended the International Club?
A. No, I didn't.

Q. Now, do you feel that you received a pretty good education at Westside High School?

[84] A. Yes, I do.

Q. Were you exposed, in your opinion, to a lot of diverse and controversial views?
A. Yes, I think I was.

Q. Will you explain a little bit about some of those views?
A. In a lot of different classes we had opportunity to talk about current issues, anything that was in the news, any politics that was in the news or issues like abortion, homosexuality, and we also had opportunity in some classes to talk about religion, atheism and different religions.

* * *

[85] Q. If a student wanted to discuss another subject other than the one in the book for that particular day, were you allowed to do that?
A. Yes. It was -- it was pretty informal and if someone had something that they wanted to talk about, a current issue or something, usually we would talk about it for the whole time or for part of the class.

Q. And what types of talks did you discuss?
A. We discussed abortion. We discussed a lot of political issues that I can't remember right now, but a lot of different issues.

Q. When you say you discussed abortion, do you mean that you just discussed the subject in general or did you

pose hypothetical questions about whether or not people should have abortions? Explain a little bit about your discussions of abortion.

A. There were hypothetical questions and we mostly took sides. We had opinions. Different people would have different opinions about abortion and we just discussed our opinions.

Q. Did the teacher at any time discuss an opinion?

A. Yes, he did.

Q. And what was his opinion?

[86] A. He had -- he had different opinions. It depended on who --

MR. DAUBMAN: Objection, Your Honor, hearsay.

* * *

Q. You said previously that you had discussed homosexuality in different classes. Would you tell me a little bit about that?

A. It was mostly in my English class my sophomore year we discussed it because it had come out in some of the literature that we were reading for the class.

* * *

[87] Q. Were you ever in attendance at any class at Westside when Planned Parenthood came in and gave a presentation?

A. Yes, I was.

Q. What class was that?

A. That was Sociology.

Q. And what occurred in that class?

A. We could come in any time during the day. We had to come in one "mod" and listen to the presentation by somebody who came representing Planned Parenthood on different methods of birth control and how they were used and their effectiveness.

Q. Was that a required class?

[88] A. Yes, it was.

Q. Were the students allowed to participate or ask questions in any way?

A. Yes, they were.

Q. Did you feel free in your classes at Westside to discuss these issues?

A. Yes, I did.

Q. Did you feel like you could give your own personal view and take a stand?

A. Yes, I did.

Q. In discussions on controversial issues, when a teacher took a stand did you see that as being the school's position or the position of that particular individual teacher?

A. I saw it as the position of that teacher, not of the school.

* * *

[89] CROSS EXAMINATION

BY MR. SIMMONDS (sic):

* * *

[90] Q. And I think you also mentioned that it was within that class that you discussed homosexuality or sexual preferences, is that correct?
A. That's correct.

Q. And I believe I heard you also say that was in connection with the book that you were reading in that class, is that true?
A. To the best of my knowledge, yeah.

Q. Do you recall the name of that book?
A. No, I don't.

Q. Do you recall if the content of that book dealt with homosexuality to some degree?
A. Yes, I think it did.

* * *

[98] Q. You mentioned that in the International Club one of the things that was done was some exposure to different cultures around the world, is that correct?
A. That is correct.

Q. Does that include the culture of Spanish-speaking countries?
A. Yes, it did.

Q. Bear with me a moment. Miss Simmonds, did you know other Christian students at Westside High School when you were a student there?
A. Yes, I did.

Q. And did you discuss religious matters with them on occasion while you were at the high school, in the building?
A. Yes, on occasion.

Q. Were you ever prevented from doing so by any member of the administration or faculty or staff of the high school?
A. Not during non-instructional time, we were not. We couldn't -- we couldn't talk about it during classes but we weren't prohibited any other time.

Q. During classes you were expected to talk about what was going on in the class?
A. That's right.

Q. But non-instructional time, as you're defining it, would include time between classes as opposed to just being [99] at the end of the day or at the beginning of the day?
A. Yes, sir.

Q. Do you feel that you were ever discriminated against by anybody at the high school, by anybody employed by the high school, on the basis of your religious beliefs?
A. No.

Q. Were you ever prevented by anyone at the high school administration, staff, faculty, from exercising your religious beliefs?
A. It was not being able to meet as a club.

Q. Was that the only exception?
A. Yes, I think so.

Q. Other than the -- and the club that you are talking about is the club that was requested by Bridget Mergens that she testified about this morning?
A. Yes, sir.

Q. Other than the club, were you ever prevented by anybody at the high school from exercising any rights of free speech?
A. No, sir.

* * *

[100] REDIRECT EXAMINATION

BY MR. DAVIS:

* * *

[101] Q. And you weren't prohibited during your times between classes from discussing controversial subjects?
A. That's right.

Q. Including abortion?
A. Yes.

Q. Or homosexuality?
A. Yes, sir.

Q. Or religion?

[102] A. Yes.

Q. But when you wanted to do that as a group, do that same thing, to discuss those subjects as a group, what happened?
A. As a club?

Q. Right.
A. We weren't allowed to.

* * *

[103] **KENDRA KELLISON**, called as a witness on her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

* * *

[110] Q. Is it your desire right now as a plaintiff in this particular lawsuit to have a fellowship Bible Club at Westside High School?
A. Yes.

Q. Why do you want to have such a club?
A. Well, every day in school I'm faced with a lot of different things and I need the encouragement of other Christians to help me make decisions and just encourage me in everything that I do.

Q. Why not have such a group as you do on Monday night instead of in the school?
A. Because it can be inconvenient a lot of times. I don't drive and its' inconvenient to have to meet some place else other than where I am.

* * *

Q. Would you envision this group meeting after school?
A. Either before or after school. Either way it wouldn't be a problem.

Q. In the school building?

[111] A. Yes.

Q. Would you want it to be treated any differently than any of the other clubs that meet at Westside High School?
A. No.

Q. Would you want it to be made up of only Westside High School students or other students from other schools?
A. Just Westside students.

Q. Who would you want to direct the group?
A. I'd want it to be student-led but if we needed to have a faculty member there, then that would be fine.

Q. Would you want to be able to use the bulletin board to advertize the group?
A. Yes.

Q. The intercom system, if that's permitted?
A. Yes.

Q. Would you want to be able to have the group written up in the school newspaper?
A. Yes. I just want it to be treated the same as the other groups that are at the school now.

Q. You don't want anything different than what the other groups already have at Westside High School?
A. No.

Q. Do you believe that right now by not being permitted to have such a group that you are being treated differently at Westside High School?

[112] A. Yes, I do.

* * *

Q. Back to the club that you would propose to have, would this club discriminate against anyone based on that individual's religious beliefs?
A. No. Anyone would be -- it would be open to anyone to come, no matter what denomination they are.

Q. Would anybody be forced to attend it?
A. No.

Q. You say it would be student-run?
A. Yes.

Q. Miss Kellison, during your time at Westside High School have you had an opportunity in any of your classes to be exposed to controversial issues --
A. Yes, I have.

Q. -- or what you consider to be controversial issues?
A. I have been -- we have had class discussions on abortion, premarital sex, a lot of like civil rights and -- [113] and prejudices, things like that.

Q. In the area of premarital sex, what class did those discussions come up in?
A. They've come up in my English class and then they have also -- just like the school newspaper has put articles on about those, and publications at the school.

Q. In talking about the English class, how did premarital sex come up in the English class?
A. I don't really recall. I just -- a lot of times we just get on a tangent and just talk about whatever came up. Sometimes it's started through the book that we are reading at the time but a lot of times it was just a student brought up a subject and we'd talk about it.

Q. And the particular English class and the situation of premarital sex, did the teacher take a stand in the classroom?

A. A lot of times he'd take a stand just compeltely (sic) opposite of what the student was, just for sake of discussion.

Q. Did you ever formulate a belief in your mind that because a particular teacher took a stand that this was in fact the school's stand on a controversial issue?
A. No. I just -- just the teacher's personal opinion.

Q. But you were allowed to freely discuss this in the classroom?
A. Yes.

[114] Q. And freely discuss it in the hallways?
A. Yes.

Q. All around school?
A. Uh-huh. Yes.

Q. Okay. Did you ever find any difficulty in the school discussing religious subjects in class?
A. A lot of times something just from the Bible would be brought up in History or in Literature but I don't recall it ever being freely discussed as a topic for the day.

Q. Discussion just didn't take place or somebody shut off discussion?
A. I just don't think that it took place a lot of times.

Q. Have you ever been prohibited from discussing that in the school setting, religion in the school setting?
A. No.

Q. Okay. Have you ever been prohibited from discussing it after school?
A. No.

Q. How about in a club setting?
A. I'm not in any clubs.

Q. So there is no offer for you to discuss that, is that right?
A. That's correct.

* * *

[115] Q. All right. Does the newspaper discuss controversial issues?
A. Yes.

Q. And by the newspaper discussing these various controversial issues, has that ever led you to believe that [116] the school supports one side of the issue or the other just because it appears in the school newspaper?
A. A lot of times it's just a student's personal opinion but there usually are two views in the newspaper about it.

Q. If one view is advanced stronger than the other, it has never led you to believe that that is the school's position, has it?
A. No.

Q. Miss Kellison, if the school were to permit a Bible Club to exist at the high school, would you view that as the advancement of one religion over another religion?
A. No, I wouldn't because it would be inter-denominational and it would be open. I mean it would be based on

just the Bible and whatever the views the people have is -- it wouldn't -- I don't think that it would be. It's kind of hard to explain but I don't -- I don't feel that it's opposing one view or anything like that.

* * *

[117] CROSS EXAMINATION

BY MR. DAUBMAN:

Q. Miss Kellison, can you describe for me what you mean by "inter-denominational"?
A. Well, I believe -- I mean I believe certain things about -- like I interpret something differently than somebody else may, and like inter-denominational may mean that people from Assemblies of God and people that are Baptists or Presbyterian can all meet together.

Q. The club that you talked about in response to some of Mr. Veith's questions, am I correct in saying that you viewed that club to be a Bible study and Christian fellowship type of club?
A. It wouldn't -- I mean it doesn't necessarily have to be a Christian that could attend. It would be open to anybody.

[118] Q. Would one of the principal purposes of the club be to discuss the Bible and read from the Bible?
A. And fellowship, yes.

Q. Also in response to one or more questions from Mr. Veith, you said that in one of your English classes that there was some discussion within that class about premarital sex, is that correct?
A. Yes.

Q. Was it your testimony that you do not remember if that came up in the context of the book that you were reading?
A. I don't recall if that's how the subject got started but a lot of the subjects that we talked about did come from the books we were reading.

* * *

[120] Q. Were you required during your time that you have been at Westside to take History classes?
A. My sophomore year, yes, and I believe my junior year.

[121] Q. History is required subject matter in both your sophomore and junior years at Westside?
A. It's required in sophomore but I'm not sure if it is required in junior year or not.

Q. Which History class did you take as a sophomore?
A. World History.

Q. Who was your teacher?
A. The first semester I had Mr. Andreas and Mr. Nelson, and the second semester I had Mrs. Taylor and Mr. Marceau.

Q. You also took a History class a (sic) a junor (sic), is that correct?
A. Yes.

Q. And what History class was that, again?
A. U. S. History.

Q. Were the teachers present --
A. Yes.

* * *

[122] Q. You testified in response to some of Mr. Veith's questions that you feel having a student club along the lines of the club that you described was important to you on a daily basis so that the people in the club could mutually encourage one another and lift each other up. Is that a fair statement of what you said?
A. Not necessarily -- not that the club would have to meet every day but just -- you know, more than just Sunday.

Q. And how often would you envision such a club to meet?
A. Probably once a week.

Q. If such a club were allowed, would you continue with your fellowship group at Bridget Mergens' house?
A. Yes.

Q. You said, I believe, that you felt that you needed encouragement from your fellow Christian students on a

regular basis and you felt that was important in your life, is that correct?
A. Yes.

Q. Okay. Do you in fact talk about religious matters and give encouragement to your fellow students and receive encouragement from your fellow students at this time?
A. On a one-on-one basis, usually, when I'm scheduled with somebody -- when we don't have a class scheduled.

Q. During your free time?
A. Yes.

[123] Q. Before and after school, as well?
A. Yes.

Q. Have you ever -- I think you have just answered this but let me ask it in a different way. Have you discussed religious matters with your fellow students at Westside High School?
A. Yes.

Q. Have you ever been prevented from going so by any member of the administration, faculty or staff at the high school?
A. Yes.

Q. Have you ever been prevented from doing so by any member of the administration, faculty or staff at the high school?
A. Not on an informal basis.

Q. If arrangements could be made for this club that you would like to see to meet immediately before school or immediately after school at the building next door to the high school which houses the West Sdie (sic) Community Church, would that be an acceptable alternative to you?
A. It would be an alternative but I don't find it necessarily acceptable because I feel that we have rights as students to meet in the school like the other clubs do.

Q. If such arrangements could be made so that you could meet immediately before or immediately after school, that would solve your transportation and logistical problems, I assume?
A. In some cases, yes.

Q. In what cases would it not?
[124] A. My Dad has appointments and stuff and when he can or can't pick me up just depends.

Q. Okay. And that would be so whether you met at the church or met at the high school?
A. Yes.

Q. I believe you testified that you wanted this club to be treated as any of the other clubs at the high school, is that correct?
A. Yes.

Q. The use of bulletin boards, the PA system, coverage in the newspaper and Year Book, et cetera, is that correct?
A. Yes.

Q. What about a faculty sponsor?
A. If we had -- if it was required that we have one, then yes, we could have one. If we don't have to, then I don't see why we couldn't still have it. As long as it is required, then --

Q. You are flexible on that point, whether or not to have a faculty sponsor?
A. Depending on whether it was required or not.

Q. Required by the school?
A. Yes.

Q. Other than the absence of this sort of club at the high school that we have been talking about, do you feel that you have been prohibited by the school from exercising your [125] religious beliefs?
A. No.

Q. Other than the club we've been talking about, do you feel that you have been prohibited by the high school from exercising any rights of free speech?
A. No.

Q. Other than the club that we have been talking about, have you been prevented by the school from associating with your fellow students?
A. No.

Q. Do you feel that you have been discriminated against because of your religious beliefs, with the possible exception of the club that we've been talking about?
A. No.

* * *

[130] **MICHELLE MARIE HARRIS**, called as a witness on her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[132] Q. Why are you asking to have a Bible Club at this time? Why are you involved in this particular lawsuit and request?
A. Because fellowship is very important to a Christian or actually really to anybody but it helps build a person up and, you know, strengthen them when they are down and --

Q. Would you explain a little bit about what you perceive you would be able to do in a Bible Club if it were allowed to meet?
A. Pray, if somebody needed prayer. Discuss an issue if somebody was confused about it. Read the Bible.

Q. Why do you feel that this is necessary to do this in a group setting as opposed to doing this as an individual?

A. Well, it -- it helps to know that there are other people that feel the same way you do and you can't really encourage yourself a whole lot. It helps to have somebody else standing there and saying, you know, "Hey, I'm behind you, I understand what you're going through."

* * *

[133] Q. Now, on the Bible Club, if a Bible Club were allowed to meet at Westside, would that club meet after school, before school, during school? When would it meet?
A. Before or after school.

Q. Would anybody be required to attend that club?
A. It's -- it would be on your own decision. If you wanted to go, you could go. If you didn't want to go, you didn't have to go.

Q. How do you feel about a faculty sponsor? Do you feel like you would like to have a faculty sponsor?
A. If it is required, we will have one. I'm not going to argue about it. I'm flexible either way.

Q. If the school required a faculty sponsor to be a club in Westside, then it would be all right with you?
A. Yes.

Q. Who would sponsor or lead the religious meetings?
A. The students would be the leaders. They would organize.

Q. Have your parents asked you to become a part of a Bible Club at Westside?
A. No.

Q. Do you attend church?
[134] A. Yes, I do.

Q. And where is that?
A. Glad Tidings.

Q. Has your pastor asked you to be involved at a Bible Club at Westside?
A. No.

Q. Do you foresee that they would be directing or sponsoring the group in any way?
A. No.

Q. If such a club were to meet today, would you become a member and actively participate?
A. Yes, I would.

Q. Why would you participate?
A. Because I -- I really feel that fellowship is very important in my life.

Q. Why can't you do this elsewhere? Why can't you do this at home?
A. I do do it at home.

Q. When do you do it at home?
A. I'll study the Bible and I'll have fellowship or I will talk with my family, as far as fellowship goes.

Q. Is that something that you do on a fairly regular basis?
A. I try every day.

Q. Why don't you -- or why can't you meet somewhere else? [135] Why can't you meet at the church next door?
A. Because I really feel we have the right to meet at the school.

Q. Do you know what the name of the church is next door?
A. I don't. No.

Q. Have you ever attended that church?
A. No.

Q. Do you know the pastor?
A. Huh-uh.

Q. Do you know any of the kids that attend that church?
A. No, I don't.

Q. Do you have any contacts at all with that church?
A. No, I haven't.

Q. Are you on school grounds during Monday through Friday?
A. Yes, I am.

Q. And you are on school grounds immediately after school ends on any given day?
A. Yes.

Q. So you would be able to attend a Bible Club if it met right after school?
A. Yes, I could.

* * *

[136] Q. How does it make you feel right now to know that you are not allowed to meet at Westside as a Bible Club?
A. I'm not too fond of it. I think it's kind of being a little bit discriminative.

Q. Are you a member of any other clubs at Westside?
A. Yes, I am.

Q. And what are those?
A. JCL, Junior Classical League; band; and Drama Club; and Welcome to Westside.

Q. What does Drama Club do?
[137] A. They have sponsored a couple of the plays that have gone on at the school. They've gone and visited other plays at other schools and they've had parties with -- over at a student's house -- houses.

Q. Go ahead.
A. That's all.

Q. Were the plays that were sponsored put on by the Drama Club?
A. No. They were put on by people who had tried out for it and --

Q. Was that in a Drama class?
A. No.

Q. So these were students who had tried out for some drama, particular play or particular event, and you sponsored that event?
A. Yes.

Q. Were those student events?
A. It was from the Westside student class. I don't know if it was from a class in particular.

Q. Do you know if that was from the Westside Drama class?
A. I don't know.

Q. Have you ever been a member of the Westside Drama class?
A. No, I haven't.

[138] Q. Do you know if there is a Westside Drama class?
A. Yes, there is, I believe.

Q. In your Drama Club, do you have a sponsor?
A. Yes, we do.

Q. And who is that?
A. Mr. Fortney.

Q. Do you know what class he teaches at Westside?
A. He teaches an English class, a sophomore English class, and the Drama class.

Q. Do you receive any grade or credit in the Drama class?
A. I don't know. I'm not in it. I'm not in the Drama class.

Q. Excuse me. Do you receive any grade or credit in the Drama Club?
A. I know they have had extra credit if you had attended that and written a report on it, attended one of the plays and written a report on it.

Q. So if you attend the Drama Club --
A. Not the Club, the plays.

Q. If you attend the plays, you get extra credit in the Drama Club for that?
A. Not the Club, the school -- the class, classes.

Q. But you have never been a member of the Drama class?
A. No. English class, it was for.

[139] Q. Okay. If I am to understand you correctly then, you got credit in English class for attending Drama plays, is that correct?
A. Yeah, as long as you had written a report up on it.

Q. Are you required to be in attendance at all the Drama Club meetings?
A. No.

Q. That is strictly voluntary?
A. Yes.

Q. Now, you said you were a member of the Junior Class League. Can you tell me a little bit about that?
A. It's Junior Classical. It's kind of like an organization or a group of people, mostly Latin students, that get together and just help out like other families, like a charity group might do, usually.

Q. Would you classify that as a service organization?
A. Yeah, I guess, usually.

Q. Do you go out and serve the public in any way in some of your activities?
A. Yes, we have.

Q. Is Latin class a required class at Westside?
A. No, it isn't.

Q. Is it an elective class at Westside?
A. Yes.

Q. Are you currently enrolled in Latin class?
[140] A. Yes, I am.

Q. And how long have you been enrolled in Latin class?
A. This is my second year.

Q. About how many people that are members of the Latin -- or of the JCL Club?
A. Probably between 20 and 25 students.

Q. And does that have a sponsor?
A. Yes, it does.

Q. And who is that?
A. Mr. Connor Wilcox.

Q. And what classes does he teach?
A. He teaches Career Ed, Book Habit Enrichment, and Latin.

Q. Do most of the kids who attend JCL Club also attend the Latin class?
A. Most of them, yes.

Q. And do most of the people who are enrolled in the Latin class also attend the Club?
A. Most of them, yes.

Q. Is the Club required as a part of the Latin class?
A. No, it isn't.

Q. Is attendance taken?
A. No.

Q. Do you receive any credit in Latin class for your participation in the JCL Club?
[141] A. No.

Q. You also mentioned that you were a member of the Band Club, is that correct?
A. Yes.

Q. Is there a Band class at Westside?
A. Yes, there is.

Q. Can you explain the difference between the Band class and the Band Club?
A. As far as I know, they're kind of one and the same.

Q. Excuse me, I can't hear you.
A. They're like one and the same, kind of like they're talking about with Choir.

Q. Is the Band Club a voluntary club?
A. You have to be in Band to be in it. I don't know --

Q. So Band Club is required as a part of Band class, is that right?
A. Yeah, I guess.

Q. You're not sure?
A. I've -- I've never taken them apart. I mean it's like if you're a part of Band, you're just part of Band.

Q. Do you receive -- do you have separate meetings? Is there a separate meeting for Band class as opposed to a meeting for Band Club?
A. No.

Q. Does the teacher take attendance?
[142] A. Yes, he does.

Q. In the Band Club and in the Band class?
A. In the Band class.

Q. Okay. So in your mind you can't see any differentiation between the Band Club and the Band class, is that correct?
A. That is correct.

Q. You are given credit, is that right?
A. Yes.

Q. And you receive a grade for that, is that right?
A. Yes.

Q. Are you required to participate in all of the Band activities?
A. Yes, you are.

Q. If you fail to participate at a Band activity, would you be graded down for that?
A. Unless it was a pep band where -- they have -- Band has two different pep bands where they'll split the band up when they go outside of the school to a game or something and if you are called to be on one pep band, you're supposed to be there unless you can find a substitute, and then if you're not -- if you

don't have the substitute or if you're not there, then you do -- it's a mark against you.

* * *

[143] Q. Okay. Is the teacher present at all the Band Club activities?
A. Yes, he is.

Q. And does he actively participate?
A. Yes.

Q. And that's the same teacher that's also with the Band class as a whole?
A. Yes.

* * *

[144] A. (sic) Do you feel like you are able to make a distinction between the activities that the school requires you to attend and the ones that you just want to participate in?
A. Yes.

Q. And do you participate in any those clubs you have a special interest in?
A. Yes.

Q. Do you have a special interest in forming a Bible Club?
A. Yes, I do.

Q. And you would like to form that Bible Club at Westside, is that correct?
A. Yes.

Q. And that would meet after school hours?

A. Before or after school.

Q. Okay. If you were allowed to have that club meet, would you require attendance of any student?

[145] A. (No response.)

Q. Would you require students to attend? Do you feel like it should be required?

A. No.

Q. So it would be completely voluntary, is that correct?

A. Correct.

Q. Now, you are a junior at Westside, is that right?

A. Yes.

Q. During your two years at Westside have you ever heard of any other student club being denied the right to meet?

A. No, I haven't.

* * *

CROSS EXAMINATION

BY MR. DAUBMAN:

* * *

[146] Q. Okay. I want you to describe for me the type of club that you would like to see meet at Westside High School that you were talking about in your responses to Mr. Davis' question. Could you describe the club for me, please?

A. This is a club that anybody could be able to meet in. That would be discussing the Bible or being prayer, having prayer.

Q. This would be a Christian Club?

A. It's for anybody who really wans (sic) to meet. It doesn't matter whether you are Christian, Jewish or anything.

Q. Okay. And you would be discussing the Bible and having fellowship?

A. Yes.

[147] Q. Is this the type of club you are looking at?

A. Yes.

Q. Would you want the club to be allowed in the same manner and under the same terms and conditions and so forth as all of the other clubs at Westside High School?

A. I would like to see that.

Q. Would that include the use of the bulletin boards to announce the existence of the club and the dates and times of meetings of the club?

A. I'd like to see as part of our equal access the school -- we would like to meet, but even if we didn't have the chance to use the bulletin board or anything.

Q. I will ask you some questions along those lines, too. Let me go through what you want in a club and then I will ask you some questions on what you would accept in a club. Let's handle it that way and maybe we won't get so muddled up. For

purposes of what you would like in a club, you would like to have the use of the school bulletin boards, as I mentioned a moment ago, is that correct?

A. I'd like to see that, yeah.

Q. Would you also want for this particular club coverage, if you will, in the student newspaper and in the Year Book the same way as other clubs are covered?

A. Yeah.

Q. Would you want to have the school recognize and [148] endorse the club as a Westside High School student club and organization?

A. I would like us to be recognized whether we're endorsed or not. They don't necessarily have to say that they agree with the people but to allow them to be able to meet, I would like to see that.

Q. Would it be acceptable to you, with the school's knowledge, to meet informally either before or immediately after school at the high school but not have it be a Westside High School club? In other words, would it be acceptable for your group to meet informally before or after school at the high school and not have all of the benefits of the other clubs and organizations at the school?

A. I think it would be acceptable but it's something, I guess, that I really would not have. We'd like to have the school's permission to actually be a fellowship Bible Club.

Q. If arrangements could be made to meet at the church next door to the high school immediately before or immediately after school for your club or group to meet, would that be acceptable to you?

A. It would be another alternative but, again, I think we do have the right to be able to meet at the school.

* * *

[152] Q. Miss Harris, you testified that you were involved in Drama Club, is that correct?

A. Yes, that is.

Q. And one of the activities was to sponsor plays, is that correct?

A. Yes.

Q. Could you explain to me what the Drama Club did in sponsoring these plays? What part did you play as a club?

A. They would put up posters or help with the background settings, sometimes setting them up.

Q. Would the Drama Club on occasion construct scenery?

A. The background, yeah.

Q. Be involved in the lighting and so forth of the production?

A. That was probably done with people who knew electronical stuff.

Q. Anybody from the Drama Club participate in that, though?

A. I have no idea.

* * *

[153] REDIRECT EXAMINATION

BY MR. DAVIS:

Q. You testified that you were not a member of the Drama class, is that correct?
A. Not of the class, no.

Q. Have you ever been a member of the Drama class?
A. No, I haven't.

* * *

KEVIN EARL BROWN, called as a witness on his own behalf, being first duly sworn, testified as follows:

[154] DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[156] Q. Are you a member of any or are you involved in any outside student activities that take place after school at Westside?
A. I was wrestling and weight-lifting.

Q. Tell me a little bit about what you do in weight-lifting.
[157] A. Basically it's -- we kind of talked earlier about modular scheduling, like usually it opens up around 2:30, the weight room will, and it's supervised, like we have hall monitors, bouncers we call them, that usually open the weight room up and close the weight room,

and they are usually there, you know, most of the time, and just more or less it's for athletes or for just people who want to go and lifting weights just for strength. I don't know what it would be for.

Q. Is that primarily open to the students?
A. Yeah. There are some people that -- there are some outsiders that come in I think that either graduated from Westside that I have seen in there, that come in and lift weights, like UNO students, college students.

Q. Now, you talk about the monitors. Are those faculty members at Westside?
A. Yes. They are. Yes.

Q. And how do they become involved in this weight-lifting? What kind of activity are they involved in there?
A. I think more or less it's like -- I think Dr. Huston, I think he might -- he's the Athletic Supervisor or whatever it is. He, I guess -- either him or Mr. Hering must ask, one of them, like there's three different bouncers, I don't know, if they would like to open the weight room up. Hurley, Jeff Hurley, he's one of the hall monitors. He's like a football coach, sophomore football coach, so he will open [158] it and it's kind of like equal time, sharing time, and there's another bouncer that will open it up, too.

Q. Do these hall monitors instruct you on how to weight lift?

A. No. It's -- you can get on a program that -- I don't know who types it up, but there is a program that is offered if you want to use it. Otherwise, it's optional. More or less -- I think most people just go by their own program.

Q. So I take it is attendance voluntary then?
A. Yeah. Well, wait, no, it isn't. They can just --

Q. Are you required to attend that weight-lifting?
A. No.

Q. Do you get a grade or receive any credit for P.E. for attending that?
A. No.

Q. Do these hall monitors attend all the club meetings, all the activities at the weight-lifting?
A. It's usually -- it's hard to say "Yes." Whoever, like if it would be one of the hall monitors opening it up, kind of like I guess they all have schedules. I don't know how they do it. If one day it's a hall monitor that opens the weight room, maybe the next day the -- Hering, he's another football coach, he might open it. It's just kind of like it kind of rotates around. It's usually someone's in [159] there but I have no idea how they do their thing, but someone's usually in there.

Q. What do they do while they're in there?

A. They usually -- well, sometimes they lift weights. Sometimes they just sit around and help people like if they need help, if they need -- like say they're squatting, say they're bench pressing, you know, if they need someone to support them, they're there.

* * *

[161] Q. Do you feel that you can distinguish between things that happen that are required by the school as opposed to things that are permitted by the school?
A. Yes.

Q. Do you feel that you can distinguish between school-endorsed activities and individually endorsed activities?
A. Yes.

* * *

[162] Q. You testified at the weight-lifting activity that other people outside Westside attended, is that correct?
A. That's correct. It seems like graduates from Westside are usually there. I've seen -- I mean I know their names, I know their faces, I know they went to Westside, and they no longer attend there and they come in weight-lifting.

Q. Were those college students?
A. Yeah. I think they're attending college.

Q. Did they attend the weight-lifting activity on a regular basis?
A. I know -- like a few I know who go to Lincoln who come up I've seen in there. I guess they're on break. Maybe they just come up for the weekend, I don't know. More or less yes. I've seen faces -- usually I've seen faces in there that attend regularly that are in college.

Q. And the students were allowed to attend the weight-lifting, as well?
A. Yes.

* * *

[163] BRYAN PHILLIP RENSING, called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

* * *

[165] Q. Did [Miss Mergens] ever discuss with you the formation of a fellowship or Bible Study group at Westside High School?
A. Yes.

Q. And do you remember when this was, approximately?
A. I think it's about late January, '85, or early February, '85.

Q. Did she share with you what she understood this group [166] was going to be like?

A. Well, I had assumed what it would be because I had been to other Bible Studies, so that wasn't really discussed. I just assumed what it would be.

Q. What did you assume it was going to be?
A. Getting together a body of believers, of Christians, getting together to share our faith with each other and build each other up and encourage each other.

Q. Is there a common term for this?
A. Fellowship.

Q. Do you believe that fellowship is an important part of your life?
A. Yes. It's Biblical principle.

Q. What do you mean by "It's a Biblical principle"?
A. It's taught in the Bible, it's taught that we should get together to lift each other up and to encourage each other to face the day and to face our trials and temptations that we face each day.

Q. So you believe that it is something that you are required to do?
A. Correct.

Q. Just on Sundays?
A. No.

Q. Is it part of your daily life?
A. Right.

* * *

[167] Q. Is it still your desire today to have the same type of -- or to have a Fellowship Bible Club at Westside High School that would be the same as any of the other non-class type clubs that exist there?
A. Absolutely.

Q. And that's the same type of group that was proposed by Miss Mergens?
A. Yes.

Q. You wouldn't want to be treated any differently?
[168] A. No.

Q. Did Miss Mergens ever discuss with you the fact that she requested to form such a group?
A. Yes, she had talked to Dr. Findley.

Q. And did she tell you what his response was?
A. She said that he had said, "No."

Q. You understand that this group that she was proposing was going to be a Christian fellowship group, right?
A. Yes.

Q. That it was going to be voluntary?
A. Correct.

Q. So you wouldn't necessarily limit it to Christians?
A. Right.

Q. Would it be student-led?
A. Yes.

Q. Now, I will discuss with you briefly the area of sponsorship. Have you thought about having a sponsor of the group?
A. I hadn't thought about it. That was something that was -- that we hadn't even reached yet, but if the school required it, then we would require it. So --

Q. You weren't going to oppose having someone in the room --
A. Right.

Q. -- at that time the club was going on?
[169] A. Right.

Q. Would you expect that person to direct or lead the activities of the group.
A. No.

Q. Do you ever recall Miss Mergens maybe discussing with you the fact that somebody had suggested that the group maybe meet next door in the church?
A. Yes.

Q. Would that have been an acceptable place?
A. No.

Q. Why not?
A. It's a little bit inconvenient. That's kind of like asking the Chess Club to meet over there, at the church. It's inconvenient and it would be -- one of our problems is

already solved. Everybody is at school already. The transportation wouldn't be a problem. Or at school there are empty classrooms after or before school that -- that I feel should be made available.

Q. As a result of the group not being permitted to form at Westside High School in 1985, was there a group that did form and met outside of the school?
A. Yes.

Q. And where did that particular group meet?
A. At Bridget Mergens' house.

Q. Did you become a member of that group?
[170] A. I had attended off and on as my schedule allowed.

Q. So you knew there was one in her home or somebody's home that you could attend if you wanted to?
A. Yes.

Q. Why didn't you attend it regularly?
A. My schedule was such that it didn't allow me to all the time. I had work that I had to do sometimes. You know, I had to go to work.

Q. How would that be different than a group that was formed at school?
A. The scheduling would be a little bit different. We could have it in the morning, before school, or we could have it right after school when work responsibilities wouldn't begin until --

* * *

Q. Tell me a little bit about a club known as Subsurfers.
[171] A. Well, what it was was a teacher by the name of Harley Hartison (phonetic), he would bring in some equipment, scuba equipment, air tanks and the like, and we would play around with them in the pool, we would swim with the equipment on and --

Q. Did Mr. -- was it --?
A. Hartison.

Q. Did Mr. Hartison stay there the entire time?
A. Yes, he was there just to supervise and make sure nobody got hurt.

Q. Did he instruct on the use of the equipment?
A. No. Just -- just at the beginning, just so you knew what you were -- just so you knew what you were doing. It was very basic.

* * *

[174] Q. You can seen under Number V, "Lessons PADI Scuba Certification," and below that is "Cost: $100.00 for WH students," and do you assume that to be Westside High School students?
A. Yes.

Q. And then $150.00 for adults?
A. Yes.

Q. Were there adults that also sometimes showed up at this club to get their certification?
A. Yes.

Q. They attended this at the same time period you were there in the club, is that correct?
A. Yes.

Q. Approximately how many students and how many adults would appear at any given club meeting?
A. Like I said, a top was probably 20, 20 students, and at the most 10 adults, I guess.

Q. The adults were not students at Westside High School, were they?
A. No.

Q. In addition to that organization, I believe that you said you were also a member of Welcome to Westside, is that correct?
[175] A. Yes.

Q. What did Welcome to Westside Club do?
A. Oh, it was -- it served as a group of people who were willing to take around new students and show them around the building, and what we did is we had luncheons for the new students so they would have somebody to get to know and, you know, so they just wouldn't come to school and be left, you know, so they

wouldn't know anybody. It was just a way for them to get to know people.

Q. Was there a faculty sponsor of Welcome to Westside?
A. Yes.

Q. And what was the sponsor's name?
A. May Ann Ricketts.

Q. What did she do at Westside High School? Was she a teacher?
A. She was a counselor.

Q. She doesn't teach, though, right?
A. No.

Q. Did Welcome to Westside have regular meetings?
A. I'm not sure. They had it -- at the beginning they probably had it once a week but later on I think it moved to probably once a month or so, but usually what happened was if they had an activity it was announced in the announcements or Miss Mary Ann Ricketts would -- she would know of a new student and introduce one of the members of the club to the [176] student so we could show them around. So it didn't really meet too regularly.

Q. Mr. Rensing, what did Miss Ricketts do as the club sponsor? What did she do in the club?
A. She just introduced new students to us and kind of got -- got the -- got the whole club going because, you know -- she got the names of the new

people and gave them to us and introduced them to us and then set us loose.

Q. Was Welcome to Westside Club a required club that you would be in for Sociology or something like that?
A. No.

Q. Was -- did you receive a grade in any course, an extra credit in any course, by reason of having been in Welcome to Westside?
A. No.

Q. You weren't required to attend the club?
A. No.

Q. And you weren't required to attend any class, correct?
A. No.

Q. Is there any class that you can conceive of that Welcome to Westside was tied to?
A. No.

Q. Back to Subsurfers. In Westside High School are you required to take Physical Education as one of your classes?
A. Yes.

[177] Q. Did you ever receive any extra credit in any of your Physical Education classes by reason of having been in Subsurfers?
A. No.

Q. Did you ever receive any -- rate any sort of additional benefit or treatment in the Physical Education curriculum by reason of having been in Subsurfers?
A. No.

Q. Were you required by any of your Physical Education classes to be in Subsurfers?
A. No.

Q. To your knowledge, is Subsurfers listed in the Year Book?
A. Yes.

Q. As an activity of the school?
A. Yes.

* * *

[179] Q. Mr. Rensing, while you have been at Westside High School have there ever been any opportunities where you've been that you have been able to enter into discussions concerning controversial activities?
A. Yes.

Q. Would you please described for the Court some of those particular activities that have occurred in the school?
A. Well, during my junior year during a -- in a class called Am Lit, American Literature Survey, we had a movie or excerpts from the movie called The Omen was shown, which dealt with some things that are contrary to my beliefs and --

Q. What sort of things did that particular movie deal with that were contrary to your beliefs?
A. Satanism, that Satan dominates over God and --

Q. You saw this in one of your regular curriculum classes?
A. Right.

Q. And you were then placed in a position where you had to discuss the movie?
A. I don't remember there being any discussion after that.

Q. It was just presented in class and just left at that?
[180] A. Right. I don't -- I don't even know -- I don't remember if there was any discussion. What we had been doing was studying things like Puritanism and had been reading the book called The Crucible, you know, dealing with things like witches from early times and books about witches. That's what The Crucible is about, is witches in Salem.

Q. And then this movie was shown in that class, also?
A. Right.

Q. Or excerpts from it, at least?
A. Right.

Q. In your opinion, as you saw that movie and as it was presented in class, was the school in any way endorsing the practice of Satanism or the religion of Satanism?
A. No.

Q. It didn't confuse you at all, did it?
A. Well, I -- the thing that did confuse me is why they wouldn't -- wouldn't mention anything until the day of it because of -- because of the fact that there are kids who would object to that sort of thing, such as me, like I was surprised that they didn't have an alternative assignment or something to do instead of having to go and see that. They didn't really provide an option.

Q. You were required to be there and see this?
A. Right.

Q. What other sorts of activities, controversial [181] activities have taken place at Westside that you can recall?
A. They have -- we have had discussions, you know, in most classes, where you would discuss social problems and politics and civil -- civil rights and things of that nature.

Q. Was abortion discussed, too?
A. Yes.

Q. Premarital sex.
A. Yes.

Q. These were all in required classes or elective classes?
A. Yes.

Q. In these particular classes, did you find your instructors on occasion taking one side or the other?

A. Yes.

Q. And by them taking that one side or the other did you view that as the school's endorsement of that particular stand, whatever it might be?
A. No.

Q. Were some of the stands that they took different from your own?
A. Yes.

* * *

[182] Q. In your opinion, had the School Board permitted such a club to meet, would you have seen that as the school giving more benefits to one religion over another?
A. No.

Q. You wouldn't have objected, would you, if somebody suggested that say a Jewish Club be formed, would you?
A. No.

MR. DAUBMAN: Objection to the form of the question, Your Honor.

THE COURT: Yes, it's leading and suggestive.

Q. Would you have objected to a Jewish Club?
A. No.

* * *

[185] CROSS EXAMINATION

BY MR. DAUBMAN:

* * *

Q. Under subheading Roman numeral V where it talks about the lessons for PADI Scuba Certification, do you see what I am referring to?
A. Yes.

Q. That Scuba Certification, was that conducted by someone other than Westside High School?
A. Yes.

[186] Q. It was conducted by Underwater World, is that correct?
A. Correct.

Q. That was something optional, entirely up to the individual?
A. Yes.

Q. And it was the adults that participated in that certification?
A. Yes.

* * *

Q. Do you know other Christians at Westside High School?
A. Yes.

Q. Have you discussed religious topics with them at the high school?
A. Yes.

Q. Have you ever been prevented from doing so by an employee of the high school?

A. No.

Q. Has any employee at the high school ever prevented you from engaging in any free speech activity?
A. No.

Q. Has any employee of the high school prevented you from freely associating with your fellow students?
A. No.

Q. For religious purposes or otherwise?
[187] A. No.

Q. Has any employee of Westside High School inhibited you in any way other than the Bridget Mergens club from exercising your religious beliefs?
A. No.

Q. With respect to the film, The Omen --
A. Yes.

Q. -- did you ask to be excused from that class?
A. At the beginning of the class the teacher had mentioned that we were going to watch the movie and she had mentioned that if you didn't want to see it, to talk to her or something, but this was in a large group setting and I'm not sure how many kids there were in it, maybe 150, I'm not sure.

Q. You elected to stay to see the movie?
A. Yes, I did because I -- I was in the middle of a row and -- and --

Q. Did you testify earlier that Physical Education was a required course at Westside High School?
A. Yes.

Q. And as part of that required course, is there a swimming unit? Does part of the course deal with swimming?
A. Yes.

Q. That used the same pool as the Subsurfers did, I assume?

[188] A. Yes.

Q. Is there a swim team at Westside High School?
A. Yes.

Q. Do you feel the swim team is related to any particular class at Westside High School?
A. No.

Q. Is there a football team at Westside High School?
A. Yes.

Q. Do you feel that is related to any particular class in the high school?
A. No.

Q. Are there one or more cheer-leading squads at Westside High School?
A. Yes.

Q. Do you feel they are related to any particular class in the high school?
A. No.

Q. Are there one or more drill teams in the high school?
A. Yes.

Q. Do you feel they are related to any particular --
A. No.

Q. -- class in the high school?
A. No.

Q. Is there a National Honors Society?
A. Yes.

[189] Q. Were you a member of National Honors Society?
A. No.

Q. Are you aware of other -- are there many other sports programs and athletic teams and intermural (sic) sports at the high school?
A. Yes.

Q. Do you feel any of those are related to the high school curriculum?
A. No.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

Q. Mr. Rensing, you testified on Cross Examination that you were never prohibited from discussing religious subjects in the school during free times, correct?
A. Yes.

Q. During those free times was there always someone present from the administration that participated in those conversations?
A. No.

Q. Was there ever anyone from the administration present when you participated in religious speech or discussions in the high school?
A. No.

[190] Q. You were answering a question, I believe, in reference to the excuse from the movie, The Omen.
A. Yes.

Q. You were stating that it was a large class setting and you were not allowed to finish your answer. What else were you going to say about why you didn't go forward and ask to be excused?
A. Because I guess I was embarrassed to get up. I don't know. I didn't want to bother anybody else, also. I was in the middle of a row where I would have been bothering a lot of people and I guess that's why I didn't.

Q. Were you caught by surprise as far as the movie and your opportunity to be excused?
A. Yes. I was -- the thing I was surprised about was the opportunity wasn't given earlier, prior to the class even beginning.

Q. Back to the area of Subsurfers and Exhibit 58, which I believe you have in front of you, Mr. Rensing, is my understanding correct that the high school permitted an outside group or an outside group to come into the high school during the club period?
A. Yes.

Q. And instruct within the club structure?
A. Yes.

Q. And you as a club member could have participated in [191] that, right?
A. Yes.

* * *

THE COURT: Did you take swimming at Westside High School?

THE WITNESS: Yes.

THE COURT: That was part of your Physical Education program?

THE WITNESS: Yes.

THE COURT: Were you in the Physical Education program when you were part of the Subsurfers organization?

THE WITNESS: Yes.

THE COURT: Did you get extra credit for participating in it?

THE WITNESS: No.

* * *

[192] **KEVIN DALE COATES**, called as a witness by the plaintiffs, being first duly sworn, tsetified (sic) as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[193] Q. And what was your understanding of [proposed Bible] club?
A. We would meet and we would discuss between us the problems and the good things of the day, to encourage each other in our beliefs and basically just to have other friends as Christians that share your same problems.

Q. Have you ever been a member of any other clubs at Westside?
A. Yes.

Q. And what clubs are those?
A. Last year I was a member of the Computer club and this year I'm a member of Subsurfers.

Q. And what activities are in the Computer Club?
A. They met once a week after school and basically their function was to make the people at Westside more familiar with the way computers run and their function and what they could be used for.

Q. Did the club meet on a regular basis?
A. Yeah. We met every Wednesday, I think it was.

Q. And was that throughout the entire year?
A. Yeah.

[194] Q. Approximately how many students were members of that club?
A. I suppose there was about 25.

Q. Did that club have a student sponsor?
A. No. It had -- it had a sponsor -- yeah, there was a sponsor, Mr. Dennis McIntyre. He was a supervisor of the computer room at Westside.

Q. Was he a teacher?
A. No, he didn't teach. He just -- he just watched the ICM, the computer room.

Q. Do you recall approximately how many Computer Club meetings you attended last year?
A. I attended just about all of them. I was the president.

Q. And of all those club meetings that you attended, how many would you say were attended by Mr. McIntyre?
A. He would usually be there but he wouldn't take part in our meetings very often. He would just maybe listen to what we were saying or something but he wasn't there for, I don't know, about a fourth of them and he usually didn't participate in our conversation.

Q. So there were club meetings that occurred where he was completely absent?
A. Right.

Q. Did this club meet on the school premises?

[195] A. Yes, it met in the computer room.

Q. At what time?
A. After school, at 3:10, on Wednesdays.

Q. Was it a voluntary club?
A. Yes, it was voluntary.

Q. Is there a computer class, to your knowledge?
A. Yeah, there are computer classes but they don't deal with the same subjects.

Q. How does the Computer Club differ from the computer class?
A. The computer classes were mainly to teach the students how to use a computer language and write their own programs and a little more involved, and the Computer Club was basically just to familiarize people with what the computers could do for them.

Q. Were you enrolled in a computer class last year?
A. Yes, I was enrolled in -- I forgot the name of it -- I think it was Pascal (phonetic) class where we learned the language of Pascal.

* * *

[196] Q. In your opinion, was the club related to any other curriculum club or any other curriculum offered at Westside other than the computer class?
A. No.

Q. You also said that you were a member of Subsurfers.
A. Right.

Q. When were you a member of Subsurfers?
A. I still am this year.

Q. Does that have a faculty sponsor?
A. Yes. Mr. Harley Hartison.

Q. And what does he do?
A. He provides the equipment and basic knowledge of how to run the equipment.

Q. Is he present at all the club meetings?
A. Yes.

Q. Is it voluntary? Is the club voluntary?

MR. DAUBMAN: Your Honor, I would like to object to the line of questioning on Subsurfers. It's redundant to the prior testimony.

THE COURT: Perhaps but I will let the witness answer.

A. Yes.

Q. Are you a member of the swim team?
A. No.

Q. Do you participate in any required swimming activities [197] at the school?
A. There was required swimming activity when I was a sophomore in P.E.

Q. But were you a member of Subsurfers at that time?
A. No.

Q. Is attendance taken at Subsurfers?
A. No.

Q. Have you ever received any -- or did you ever receive any credit when you were a member of the swim team last year for attending -- scratch that. Have you received any credit for attending Subsurfers in any class?
A. No.

Q. Are you graded at all for attending Subsurfers?
A. No.

* * *

[198] Q. Why do you want to attend a Bible Club at Westside?
A. Because I feel that it would let me get to know more Christians that I could maybe see every day. Maybe there's some people at Westside that are Christians that I don't know or maybe there's some people at Westside that would like to become Christians and follow God.

* * *

[202] **DEREK NEIL STONEBURG**, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

* * *

[205] Q. What is [Mr. Hurley's] function in the school?
A. They make sure that you have a pass if you leave school or that if you are walking in the halls that you go to a study area and study. They just pretty much keep the school running smooth.

Q. Mr. Stoneburg, did you come to know about the intermural program through the Fair that occurs in the fall, the yearly Activities Fair?
A. No, I didn't.

Q. How did you come to the knowledge of the inter-mural (sic) program, the activity known as inter-mural (sic) basketball?
A. Well, I tried out for basketball and I didn't make it and when I found that out I found out they do have inter-murals (sic). That's how I found out, through friends.

Q. Did you attend the Activities Fair that occurred at the beginning of the last school year?
A. I don't remember.

Q. Other than inter-mural (sic) basketball, are there any other activities that you have been involved in at Westside High School?
[206] A. My sophomore year of basketball on the team is the only thing.

Q. As far as any of the other clubs are concerned, Chess Club, any of those?
A. No.

Q. Mr. Stoneburg, as a result of being in inter-mural (sic) basketball -- scratch that question. At Westside High School during your sophomore year were you required to take athletics, P.E., if you will?
A. Yes, we were.

Q. What did that particular part of the curriculum consist of? What did you do during your sophomore year?
A. In Gym class we just basically went over different sports we played, such as like, you know, when it was warmer we played outside, such as soccer and tennis, and when it got a little colder out we would stay inside and play basketball and paddle ball, things like that.

Q. Did you receive a grade in Physical Education class?
A. Yes.

Q. As a result of being on the basketball team during your sophomore year, did you receive a higher grade or any type of extra credit in the P.E. curriculum?
A. Not that I know of, no.

Q. As a result of being in inter-mural (sic) basketball during your junior year, did you receive any extra credit or [207] higher grade in your Physical Education course?
A. No.

Q. Did you take Physical Education during your junior year?
A. No.

* * *

Q. You know that Westside High School does not have a Christian or, if you will, a Bible group of fellowship group at the high school?
A. Yes.

Q. Are you, yourself, a Christian?
A. Yes, I am.

Q. Where do you attend church?
A. Evangel Assembly of God.

Q. If a club as was proposed by Miss Mergens were formed at Westside High School, would you consider becoming a member of that club?
A. Yes. If it did fit into my schedule, I would.

* * *

[208] Q. Do you believe as part of being a Christian that daily fellowship is an important part of your life?
A. Yes, I do.

Q. If such a club were offered at the school, you would be interested in it if it would work into your schedule?
A. Yes, I would.

Q. Do you work after school?
A. No, I don't.

Q. Would it be more convenient for you to have the availability of such a club at the school?
A. Yes, it would.

Q. You would understand, would you, that this type of a club would be a voluntary club that you could or could not join, depending on your choice, right?
A. Yes.

Q. If Westside High School were to permit such a club, would you see this as the high school favoring one particular denomination over another?
A. No.

Q. One particular religion over another?
[209] A. No.

Q. Just one other question. Mr. Stoneburg, as a result of your P.E. curriculum during your sophomore year which I understand was required, were you required to also be a member of the basketball team?
A. No, I wasn't.

* * *

[210] **JENNIFER RENEE HILT**, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[211] Q. If a Bible Study were permitted to meet at Westside, would you attend and participate actively in that club?
A. Yes, I would.

Q. And why is that?
A. Religion is -- I mean fellowship is a big part of my religion and I just feel that the time we do talk about religion at school is not enough, just in between classes and in classes, and that as Christians we need to get together, together.

Q. Are you a Christian then?
A. Yes, I am.

* * *

[212] Q. Are you currently a member of any club at Westside?
A. I am currently a member of FBLA, which is Future Business Leaders of America.

Q. What types of activities does FBLA engage in?
A. They have fund raisers, and those fund raisers, the money from that goes to send people to Leadership Conferences.

[213] Q. Have you personally participated in any of those activities?

A. I had sold -- like I have sold in the concession stand for a while but I have never been to a Leadership Conference.

Q. Have you ever taken any Business classes at Westside High School?
A. Yes, I have.

Q. And what class was that?
A. I have taken Accounting and I have also taken Business Principles and Marketing.

* * *

Q. Do you see any relationship at all between FBLA and those Business classes that you attend?
A. Not -- no, because FBLA, most of it has been fund raisers, at least what I have seen on FBLA, and I have never been to a Leadership Conference so I don't know if those would pertain to our classes.

Q. What type of activities are involved in the [214] curriculum of those Business classes that you are involved in?
A. Accounting is just strictly Accounting and Marketing was just learning terms of Marketing and the techniques of Marketing.

Q. I want to get back to the FBLA Club a little bit. Do you have a faculty sponsor at the club?
A. Yes, we do.

Q. Do you know what the sponsor's name is?
A. I believe her name is Mrs. Winslow.

Q. Does Mrs. Winslow attend the club meetings on a regular basis?
A. Yes, she does/

Q. And what does she do at those club meetings?
A. She just monitors them to make sure that everything goes smoothly, and the president of the club usually leads the meetings but she'll jump in, you know, when she needs to.

Q. So you characterize her as a monitor. Will you explain a little bit more about that?
A. She just sits there to make sure that, you know, there is not an uprising (laughing) of the students or something. She just sits in there and she sponsors all the -- like fund-raising, she organizes the fund-raising along with the president and the vice president and the secretary of the club.

Q. Was Mrs. Winslow ever involved in the activities [215] outside of Westside High School?
A. That -- we sell candy in the school, in the concession stand, and since she has classes she does not -- she is not always in the concession stand.

Q. So she is not there to monitor the activities that are going on while you are selling the candy?
A. Sometimes she would be in there but not a hundred percent of the time, no.

Q. Is FBLA a required class?
A. No.

Q. Is FBLA a required club?
A. No.

Q. Did you receive any extra credit or a grade in the Business classes that you attend for attending the club?
A. No, I have not.

Q. Is FBLA a voluntary student club?
A. Yes.

* * *

Q. What's your relationship with Bryan Rensing?
A. Bryan and I are good friends. We go to the Math IMC every morning and sit in there and talk and stuff.

Q. And what is the subject of those conversations?
[216] A. Many times we talk about school and we also talk about things going on in our church and things going on about this case, also.

Q. Now, you said you meet in the Math IMC. Would you explain where that is for me, please?
A. That is a study center that students can go to before school or during their open "mods" during school.

Q. And is that in a classroom in Westside?
A. It's not a classroom. It's just an area that students can go to. It's a room that students can go to to study.

Q. And that has been set aside by the faculty for you to use --
A. Yes.

Q. -- to study?
A. Yes.

Q. Tell me a little bit more about the activities that you engage in with Bryan Rensing in that classroom. Do you discuss religious topics? Do you pray? What exactly do you do?
A. We do discuss religious topics. We don't pray, but yeah, we do discuss religious topics.

Q. Do any other students attend those meetings?
A. Lisa Healy is in there.

Q. Is that all?
[217] A. Yeah, most of the time.

Q. Are you a member of any other club at Westside?
A. Welcome to Westside.

Q. What is Welcome to Westside?
A. This is a club that they call you when you're needed to take new students around the school building.

Q. You say, "they call you." Who calls you?
A. The sponsor of that club.

Q. And who is that?
A. Mrs. Ricketts.

Q. Have you ever had a meeting in a classroom with Mrs. Ricketts as part of this club?
A. No.

Q. Do you see Mrs. Ricketts at all on a regular basis?
A. No.

Q. How often has she contacted you to show new students around the school?
A. I have not been contacted at all.

Q. But you are a member of the club?
A. Yes.

Q. And that's a voluntary club?
A. Yes.

Q. Does it meet at any time in any class or any other place in Westside?
A. No.

[218] Q. How long have you been a member of that club?
A. Just this year, since the beginning of the year.

Q. In your opinion, does that particular club relate to any class that you are currently enrolled in?
A. No.

* * *

LISA ANN HEALY, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

* * *

[219] Q. While you have been at Westside High School, Miss Healy, have you had an opportunity to become involved in any of the student clubs and activities that go on there?
A. Yes, I have.

Q. What clubs and activities have you become involved in?
[220] A. I was involved in International Club last year and Peer Advocates last year, and this year I am involved in Drill Squad, Student Athletic Trainer, and Welcome to Westside.

Q. Let's take the first one. You said International Club last year?
A. Yes.

Q. What did International Club do? What were the activities of International Club?
A. I wasn't a faithful member but they raised money for Homecoming and for other activities.

Q. It was just a fund-raising club?
A. Well, they supported the foreign languages.

Q. And how did they support the foreign languages?
A. Just by recognizing them.

Q. Where you in any particular foreign language at the time that you were in International Club?
A. Yes, I was.

Q. What foreign language were you taking?
A. Spanish III.

Q. As a result of being in Spanish III, were you required to be in International Club?
A. No, I wasn't.

Q. Were you required to be in International Club as a result of any other courses you were taking at Westside High School?
[221] No.

Q. I realize you didn't attend real faithfully but were there times in International Club where they would do things other than raise money? Did they have social functions?
A. Not that I know of.

Q. Did you ever attend International Club where they maybe showed a movie or a film about a foreign country?
A. No.

Q. Do you know who sponsored that particular club?
A. No, I don't.

Q. Also in your sophomore year you were a member of what other organizations?
A. Peer Advocates.

Q. What is Peer Advocates?
A. We are a buddy for a mentally retarded kid that attends Westside.

Q. Is this someone that lives in District 66?

A. No. They can live in Papillion or Ralston.

Q. Is it they are bused into or brought in to Westside High School?
A. Yes.

Q. Do you know why that is?
A. I suppose for the facilities we have.

Q. Is there a Special Education Program at Westside High School then?
[222] A. Yes, there is.

Q. And who supervises this Peer Advocates?
A. I don't know the name off the top of my head.

Q. Do you know what this individual's function might have been? What did the supervisor do?
A. She works with the mentally retarded.

Q. In Westside High School?
A. Yes.

Q. Is she the head of the Special Education Program at Westside High School?
A. I don't know.

Q. As a result of being in Peer Advocates, were you required to take any course of study at Westside High School?
A. No.

Q. Did you get a higher grade in anything at all as a result of being in Peer Advocates?

A. No, I didn't.

* * *

[223] Q. In addition to International Club and Peer Advocates in your sophomore year, were you a member of any other activities during your sophomore year?
A. Band.

Q. Tell me a little bit about Band. Was that an actual classroom organization that you were in?
A. Yes. We played musical instruments during class.

Q. What instrument did you play?
A. The flute and piccolo.

Q. Were you as part of Band required to be in practices before or after school?
A. Yes.

Q. Did you also have a period during the day that you practiced?

A. Yes.

Q. So you had a regular classroom time that you attended Band and then you also had time in the morning and afternoon [224] that you practiced?
A. Yes.

Q. Did you also perform concerts and recitals with the Band at activities and other outside-school events?
A. Yes, I did.

Q. If you did not attend those outside-school events, would that have affected your grade in the course known as Band?
A. Yes, it would have.

Q. Did you in fact get a grade in Band?
A. Yes.

Q. Was attendance taken at Band functions?
A. Yes, there was.

Q. Did that include the activities at school like assemblies, football games and the like? Was attendance taken there?
A. Yes.

* * *

[225] Q. During your junior year what activities have you participated in?
A. Welcome to Westside, Drill Squad, and Student Athletic Trainer.

Q. Tell me a little bit about your experiences in Welcome to Westside. What did you do there?
A. I haven't done anything yet. We just take kids around, new kids around, Westside to get them acquainted with the kids and the classes taken.

Q. You take new kids at Westside High School around the school, is that it?
A. Yes.

Q. And what is the purpose of taking them around the [226] school?

A. So that they will have a feel of the school.

Q. Does Welcome to Westside have a sponsor?
A. Yes. Mrs. Ricketts.

Q. And what does she do?
A. I don't know. There hasn't been any meetings of it.

Q. There haven't been any meetings of Welcome to Westside?
A. Right.

Q. Did you sign up for Welcome to Westside at the beginning of your junior year?
A. Not the very beginning. At the Club Fair Day.

Q. When did the Club Fair Day take place?
A. I don't know the exact time.

Q. Some time during the first part of the school year?
A. Yes.

Q. And what is the Club Fair Day? What happens there?
A. They recognize all the clubs that are at Westside.

Q. How do they recognize them?
A. They have little booths, telling them what they do and the activities that take place, and they have a sheet that you can sign up for the activities if you are interested.

Q. And on Fair Day are you expected to sign up for any club?

A. No.

[227] Q. Are you required to sign up for any club?
A. No.

Q. As part of being a sophomore or junior, were you directed that you had to be a member of any particular club?
A. No.

Q. And you said there was one other organization that you were a member of, I believe, this year.
A. Drill Squad and Student Athletic Trainer.

Q. What does Drill Squad do?
A. Drill Squad is a pep -- pep girls that perform at basketball and football games and support the school during their athletics.

Q. You say, "perform." You do drill type activities?
A. Yes. We dance.

Q. Dance. Okay. Is that a club that is also a voluntary club that you join?
A. Well, you have to try out for it, so, yes, it would be.

Q. You are in your junior year this year. Are you required to take Physical Education this year?
A. No.

Q. Were you required to take it last year?
A. Yes, I was.

Q. And what sort of activities did you do in Physical Education curriculum?
[228] A. I myself was unable to participate fully because I had an injured knee, but what I did do, we played softball, tennis, badminton, and we ran track.

Q. Were you required, as a result of being injured last year, to take Drill Squad this year to make up for your P.E. requirement?
A. No.

Q. Is there any relationship at all that you can see between Girls Squad and the Physical Education curriculum at Westside High School?
A. No.

Q. For that matter, is there any relationship that you can see between Welcome to Westside and any curriculum that is offered at Westside?
A. No.

Q. How about Peer Advocates?
A. No.

Q. How about International Club?
A. No.

Q. Miss Healy, you heard the testimony just a moment ago of a group that meets in the morning, a number of students that meet in the morning, I believe in the Mach MCI room or whatever. Are you one of the members that meets in that room?
A. Yes, I am.

Q. And who all meets there with you?
[229] A. Jennifer Hilt, Bryan Rensing, and once in a while Bryan's brother, Kevin Brown.

Q. And what's the purpose of the particular meeting?
A. Just to talk about our weekend and our days and what's going on on the weekends.

Q. To your knowledge, are these other individuals that you meet Christians?
A. Yes.

Q. Are you yourself a Christian?
A. Yes, I am.

Q. Where do you attend church?
A. Glad Tidings Assembly of God.

Q. How long have you attended there?
A. About nine months.

Q. Do you understand the term "fellowship"?
A. Yes, I do.

Q. What does fellowship mean to you?
A. To me it means a group of kids getting together, sharing the same beliefs or sharing their feelings with each other and able to talk with them.

Q. Do you consider what you do with Bryan Rensing and Kevin Brown and others in the Math room in the morning to be fellowship?
A. Yes, I do.

* * *

[230] Q. As far as this group that meets in the Math -- the Math Sciences Room--?
A. Mach IMC.

Q. Math IMC. As far as that group that meets in there, do you know if any of the faculty knows that you meet in there?
A. No. They see us in there but there are other kids in there, too.

Q. You have never been stopped or prevented from meeting in there?
A. No.

Q. Have you?
A. No, we haven't.

Q. Do you know whether any of the faculty members know what you're doing in there at all?
A. No.

[231] Q. I think there was one other final activity that you were involved in. Was that Athletic Trainer?
A. Yes.

Q. And what is that, Miss Healy?
A. We learn how to tape ankles and injuries of the athletes.

Q. Is that something that is an activity listed on the activity sheet or advertised, if you will, at the Club Fair at the beginning of the year?
A. Not that I know of.

Q. How did you come to participate in that activity?
A. When I injured my knee, Anton Martinez helped me recuperate and he asked me if I was interested because I was interested in going into Physical Therapy, and he just asked me if I would like to.

Q. At Westside High School are there any Physical Therapy classes, if you know?
A. Not that I know of.

* * *

[234] BY THE COURT: With regard to your Peer Advocates group, tell me a little bit more what you do.

THE WITNESS: We take the kids out on weekends [235] and get to know them and be their friends.

BY THE COURT: And when you say, "take them out," you take them out where and what do you do?

THE WITNESS: Just like you would do with a normal person, you'd take them to a movie or out to lunch or out shopping.

BY THE COURT: You go to movies and shopping and things like that?

THE WITNESS: Yes. Just --

BY THE COURT: Okay. And this is all done outside the school or do you have some duties at the school, as well?

THE WITNESS: The duties are to attend the meetings but the duties of taking the kids out are outside the school.

BY THE COURT: Where do these meetings occur?

THE WITNESS: Inside of school.

BY THE COURT: And what happens at these meetings?

THE WITNESS: We discuss the activities we are going to do. We usually do them in groups, like go to the Zoo or a group of us will just go to the movies with our peers.

BY THE COURT: With your what?

THE WITNESS: Special buddy.

BY THE COURT: With your special person?

THE WITNESS: Yeah.

BY THE COURT: And do you have any educational responsibilities with regard to your special friends?

[236] THE WITNESS: No, just to be their friend.

BY THE COURT: And held them if they need help when they first come in finding the facilities at school and things like that or is that -- does Welcome to Westside do that?

THE WITNESS: That would be Welcome to Westside.

* * *

[238] JEFFREY THOMAS RAMSELL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

* * *

[239] Q. As a result of being at Westside High School, have you become familiar with the activities, clubs, et cetera, that go on in the school?
A. Yes, I have.

Q. Have you participated in any of the activities that go on at the school?
A. Just volleyball and football.

Q. Let's talk a minute about football. Was that during your sophomore or your junior year or both?
A. Both years.

Q. Do you play on the high school team?
A. As in my sophomore year, I played on the sophomore team, and during my junior year I played on the junior varsity.

Q. Is this a regular football team that represents the high school in various athletic events around the city?
A. Yes, it is.

Q. What position did you play, Mr. Ramsell?

A. Split end, kicker. That's basically it.

Q. As a result -- withdraw the question. During your sophomore year were you required to be in Physical Education as part of the curriculum at Westside High School?
A. Yes, I was.

* * *

[240] Q. As the result of being in the P.E. curriculum at Westside High School, were you also required to be on the football team?
A. No, sir.

Q. Did you receive any extra credit or extra grade consideration during -- for your P.E. class as a result of being on the football team?
A. No, I didn't.

* * *

[241] Q. You mentioned that you also participated in a sport known as volleyball. Was that inter-mural (sic) volleyball?
A. It's more of a club organization.

Q. How did you come to know about this inter-mural (sic) volleyball?
A. Through a friend.

Q. He told you about there being a club that played volleyball?
A. Yes. It's -- it's not a school-run club, though. It's run by the girls' volleyball coach at Westside.

Q. Do you all practice volleyball?
A. Yes.

Q. Do you practice on a regular basis?
A. Not really regular but we do practice.

Q. When does the volleyball season start for you in this activity?
A. I think back in February.

Q. And when does it usually end?
A. It ends this Saturday with our last tournament.

Q. Do you practice, when you practice, at Westside High School?
A. Yes, we do.

[242] Q. And is there a sponsor there that watches you while you practice?
A. Yes.

Q. Does that sponsor also play with you?
A. No. She just coaches.

Q. She just coaches.
A. Yeah.

Q. Is the team made up of Westside High School students?
A. Almost all of them, except for one.

Q. You say there is one that is not. Who is that one?
A. Kip Howard is an eighth grader at Valley View, I think.

Q. So he is an eighth grader and he plays on the team?
A. Yes.

* * *

[243] Q. Mr. Ramsell, if such a club were offered at Westside High School would you want to become a member?
A. I don't know. It depends on the time.

Q. Do you attend a particular church in town?
A. Presbyterian Church of the Cross.

Q. Do you attend that regularly?
A. No.

Q. Are you a member of any Youth Groups or Fellowship Groups in that church?
A. Not any more.

Q. So you are not very active in the church, is that right?
A. No, I'm not.

Q. So what would help you make your decision as to whether or not to join such a [Bible Study] club if it were formed at Westside High School?
A. It solely depends on how much time I have between all the other activities I do.

Q. If you had the time, would you feel compelled to join it?
A. Not at all.

Q. You understand that it would be a voluntary club?

[244] A. Yes.

Q. If such a club were permitted at Westside High School, would you see that as the school favoring one religious belief over another?
A. Not at all.

* * *

RICHARD PAUL HUSTIG, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[245] Q. Have you ever been a member of any club at Westside High School?
A. Yes, I have.

Q. And what club is that?
A. Future Business Leaders of America, FBLA.

Q. When were you a member of that club?
[246] A. My sophomore year.

Q. That was last year.
A. Yes.

Q. What types of activities did you engage in when you were in that club?
A. We attended like fund-raisers, like for Honey Sunday or for State Leadership Conferences or National Leadership Conferences.

Q. Did you personally participate in any of those activities?
A. I participated in the fund-raisers. That's about it.

* * *

Q. Did that particular club have any teacher sponsor associated with it?
A. Yes, it did.

Q. And who was that?
A. Mrs. Winslow.

Q. Did Mrs. Winslow attend the club meetings?
A. Yes, she did.

* * *

[247] Q. Was FBLA a required club?
A. No, it isn't.

Q. So that is a voluntary student club, is that correct?
A. Yes, it is.

* * *

[248] Q. Are you aware of any Business classes that are offered at Westside High School?
A. Yes, I am.

Q. Have you ever been enrolled in any Business class?
A. Not until next year, no.

Q. When you were in FBLA, did you receive any credit in any class for attending that particular club?
A. No, I haven't.

Q. Was attendance taken at club meetings?
[249] A. No.

Q. Mr. Hustig, have you been involved in any other student activities while you have been at Westside High School?
A. Band.

Q. Tell me a little bit about Band. What does that invovle (sic)?
A. It involves "involuntary" group of people if they wanted to keep up with their instrument that they learned in their previous life, like in sixth grade, they can sign up for it. It's an elective class.

Q. So you would characterize that as a class?
A. Yes.

* * *

[250] Q. If Westside High School permitted a Bible Club to meet, would you attend?
A. Probably not.

[251] Q. And why is that?
A. I don't know. I have mixed doubts.

Q. When you say you have mixed doubts, can you explain yourself a little bit?
A. Boy, that's a tough question. I -- now, are you talking on the religious status or just on the fellowship?

Q. I am just asking you if you would attend and, if not, why not?

A. It would be like they would be restricting me in following the Christian ways or whatever.

Q. So you don't feel like you have any particular interest in a Bible Club, is that right?
A. Yes.

MR. DAUBMAN: Objection to the form of the question, Your Honor.

THE COURT: Sustained as leading.

Q. Do you have any particular interest in attending a Bible Club?
A. No, I don't.

Q. If a Bible Club were allowed to meet at Westside, would you feel compelled to attend it?
A. No.

Q. If the school offered a Bible Club like all the other clubs, would you feel that the school was favored one religion over another?
[252] A. No.

* * *

THE COURT: Mr. Hustig, just a minute. You say you belong to Future Business Leaders of America Club?

THE WITNESS: Yes.

THE COURT: Or did last year, is that right?

THE WITNESS: Yes.

THE COURT: And did this club have any goals other than selling honey to support Multiple Sclerosis that you know of?

THE WITNESS: In the State Leadership Conference, or SLC, they had competition-like things and they would try to see who could, I'd say, debate over one another. That was about it.

THE COURT: This was debate over business practices or --

THE WITNESS: That, I don't know. I never attended one.

* * *

[254] **JAMES E. FINDLEY**, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

Q. Dr. Findley, would you state your full name?
A. James E. Findley.

Q. And where do you reside, Doctor?
A. 3110 South 104th Street.

Q. And that is in Omaha, Nebraska?
A. That's right.

Q. You currently are what? The principal at Westside High School?
[255] A. That is correct.

Q. How long have you held that particular position?
A. My third year.

* * *

[257] Q. Dr. Findley, would you please describe to the Court what your current position is and what your basic duties are in that position?
[258] A. I'm the Principal at Westside High School and in that position I have the responsibility for all the classes, activities that take place as part of the high school program.

* * *

Q. You said you are responsible for the activities that go on. In what respect are you responsible for activities that go on at Westside High School?
A. In the people assigned, that are assigned to those are responsible to me.

Q. For example, the club system at Westside High School, what is your relationship to the club activity system at Westside High School?
A. Actually, that, I work -- I have the responsibility for it overall. Mr. Huston, who is an Assistant Principal, works with club activities.

Q. So the overall daily operation of the clubs and activities at Westside High School is under the authority -- [259] under your overall authority but under the specific direction of Mr. Huston, is that correct?

A. I'd say so although we probably -- we operate on a kind of management team basis so we work together on those things.

Q. How long have you worked on the club activities program at Westside High School?
A. Worked on it?

Q. How long has it been under your authority?
A. Directly under my authority for the last three years.

Q. And prior to that time?
A. It would have been directly under the previous Principal.

* * *

[260] Q. What is Exhibit 63, Dr. Findley?
A. It's a list of student activities and clubs that we have at Westside High School.

Q. Approximately how many of those exist at Westside High School? I'm not looking for an exact figure, jsut (sic) approximately.
A. The majority of them.

Q. Pardon?
A. Most of them.

Q. No. How many exist? How many activities are there, approximately?
A. I don't know without counting. Twenty-five, 30, I suppose.

Q. Now, Dr. Findley, in your opinion are all of those clubs at Westside High School curriculum-related?

A. Yes, they are.

* * *

[262] Q. You have heard testimony yesterday and possibly today about Band and how students are required to attend Band concerts outside of school, rehearsals before and after school. Do you disagree with any of that testimony?
A. I agree with the fact that the kids have to attend some of the -- or the activities outside of school as part of their grade, yes.

Q. And if they don't attend it will affect their grade, correct?
A. It could, yes.

Q. Well, it could or it wouldn't?
A. It may not in some times. It depends on if the student, you know -- what the reason is the student would have to miss it.

Q. But unless it's a valid excused absence for some reason, to just not attend these functions outside of the school would probably result in a lower grade, wouldn't it, Dr. Findley?
A. It could.

Q. Please answer "Yes" or "No," it would or it wouldn't?
A. In the majority of situations, I think it would.

Q. The second club that is listed on there or student [263] is that of Chess Club, correct?
A. Right.

Q. That does not list in its description that it is part of the curriculum, but your testimony has been that it is, correct?
A. Yes.

* * *

Q. Is it your opinion that the Chess Club is part of the curriculum, Dr. Findley?
A. Yes.

Q. Would you please explain to the Court how Chess Club is part of the curriculum?
A. Curriculum to me includes all of our required courses, our elective courses, all the activities and clubs, activities that fall in the curriculum as part of the co-curricular part of it, and there would be a number of other things that probably could fall in there, as well, but definitely I've always thought of activities as part of our curriculum.

Q. So just the very fact that it's a club at Westside High School makes it curriculum, in your opinion, is that correct?
[264] A. The fact that it's a club grows out of mission and goals for us, and what I believe parents expect or would think appropriate to offer, yes.

Q. When you say "mission and goals," what mission or goal is fulfilled by the Chess Club at Westside High School?

A. Oh, I think there could be a number of things. First of all, I think a lot of activities are provided for young people to become involved and feel good about themselves and there's a great deal of information that indicates that kids who are really successful in school are also heavily involved in activities, so that their time is utilized and they don't have just spare time on their hands, and the majority of kids who are successful in school are involved in activities. So to just be in an activity itself, we have always felt it is important to the curriculum at Westside high School but it also allows students an opportunity to do critical thinking, logic, those kinds of things that are extensions of what we have as goals and objectives for a number of courses in what we do.

Q. Do you have a Critical Thinking class at Westside High School?
A. No, but we have critical thinking emphasized in a number of classes.

Q. Do you have a Logic class at Westside High School?
A. We have logic emphasized in Computer classes.

[265] Q. I'm not asking you where it is emphasized, Dr. Findley. I am asking you, do you have a Critical Thinking class at Westside High School?
A. No, we do not.

Q. Okay. Do you have a Logic class at Westside High School?
A. No, we do not.

Q. Do you have a Problem-Solving class at Westside High School?
A. Yes, we do.

Q. Okay. What class is that?
A. That will be new this next year for ninth-graders.

Q. I am asking if it exists now.
A. It exists in the ninth grade, not at our high school.

Q. Okay. So you don't have that in the high school either, is that right?
A. That's correct.

Q. Do you have a Chess class at Westside high school?
A. No, we do not.

Q. Okay. Does, to your knowledge, any student receive a higher grade academically or extra credit academically by reason of the fact that they are participating in Chess class?
A. No.

Q. Let's take a look at Cheerleaders, Dr. Findley. Cheerleaders, again, does not state that it is, in fact, part [266] of the regular curriculum. Is it your testimony that it is curriculum-related?
A. Yes.

Q. And what curriculum is it related to?
A. Activities and clubs.

Q. I beg your pardon?
A. Activities and clubs.

Q. You are saying that because it's an activity or a club it's curriculum-related?
A. (Nodding head affirmatively.)

Q. And what class is it related to?
A. It certainly, in terms of relationship to classes, deals with involving kids in activities for their enjoyment as well as physical activity.

Q. I want to back up there because I think you shook your head and didn't give me a complete answer. Is it your testimony that Cheerleaders is curriculum-related because it is part of the clubs and activities at Westside High School?
A. That's right.

Q. That's the reason it is?
A. It's part of the curriculum. I think the curriculum at Westside High School includes activities.

Q. Is there any class at Westside High School called Cheerleaders?
A. No, there is not.

[267] Q. Is there any grade that one obtains in any particular class, higher, lower or whatever, for being a member of Cheerleaders?
A. No.

Q. Is Cheerleaders required as part of the Physical Education program?
A. No.

Q. Do you have any of the course syllabuses or classroom syllabuses that would show that Chess and/or Cheerleading is part of the core curriculum offered at Westside High School?
A. Defined "core curriculum."

Q. Part of the classes that are offered, whether they be elective or required classes.
A. No.

Q. I just want to compare a couple more of these clubs with you. Take Choir, for example, which I believe is the third one -- the fourth one down. This, again, is stated to be offered as part of the curriculum at Westside High School.
A. Yes, it's a class.

Q. Is Choir very much the same as Band in that you are also required to attend outside activities?
A. Yes.

Q. And if you don't attend outside activities and don't have a valid excuse, would your grade be lower --
[268] A. It could be.

Q. -- probably in Choir?
A. It could be.

Q. What do you mean, "It could be," Dr. Findley?
A. I am not sure that in every instance when a student misses that activity their grade is lowered.

Q. Is there a credit given for Choir?
A. Yes.

Q. Would you assume that it would be like any other course at Westside High School, that if you miss all of the classroom periods that you wouldn't get credit for it?
A. If you missed all the classroom periods?

Q. Yeah.
A. You wouldn't get credit for it.

Q. That's right.
A. That's right.

Q. Would it be safe to assume that if you missed all of the outside activities of Choir that you probably wouldn't get credit for it or you'd get a pretty bad grade in it?
A. That's safe to assume.

Q. Page 2 of Exhibit 63, you have a club known as Interact. Will you please tell the Court how Interact is related to the curriculum at Westside High School?
A. Again, it's an activity for young people to become involved and to become socially involved with peers and to [269] build -- to build relationships, and it's also a service club and it gives kids an opportunity to become involved in a service activity where they may not -- where they may either do one of two things. It's an offshoot or it could come out of objectives we have in other classes or it might get them interested in taking a class that would provide something like that.

Q. In fact, Interact is a service club that involves itself through the Rotary, Rotary International, with outside type service activities, correct?
A. Maybe inside.

Q. Inside or outside?
A. Right.

Q. But they involve themselves in activities and they are more or less under the sponsorship, from the outside at least, of the Rotarians, correct?
A. Well, yeah. We have our own sponsor, and, yeah, we work with -- with Rotary.

Q. With the Rotarians?
A. Right.

Q. Do you get a grade in any particular class as a result of being in Interact?
A. Not to my knowledge.

Q. What course at Westside High School is Interact related to?
[270] A. Well, we have service emphasis in -- that has come out of various classes over time -- Sociology, Psychology has had service areas, those are the ones that come to mind. In fact, kids' grades have been determinative to some extent, you know, if they're willing to get involved and do a service project.

Q. That used to be required in one of the courses at Westside High School but is no longer required, correct?
A. It's an option, I think.

Q. But it's not required?
A. Not to my knowledge, it isn't.

MR. VEITH: Your Honor, may I approach the clerk?

THE COURT: Yes.

MR. VEITH: Exhibits 14 and 17.

Q. Handing you, Dr. Findley, Exhibits 14 and 17, I would ask you to examine those, please.
A. (Checking exhibits.)

Q. Dr. Findley, what is Exhibit Number 14?
A. Course Goals and Objectives for Sociology.

Q. In anywhere of those Course Goals and Objectives does it list interact as one of the requirements of the Course and Goals Objectives?
A. No, it does not.

Q. Does it require there that a student be involved in Interact?
[271] A. No, it does not.

Q. Yet your testimony, I believe, was that it relates to the Sociology course at Westside High School, correct?
A. It could, yes.

Q. Exhibit 17 is what, Dr. Findley?
A. Psychology Course Objectives.

Q. Anywhere in there does it require a student to participate in Interact?
A. No.

Q. Is Interact listed in there as one of the course goals, objectives or requirements?
A. No.

Q. Yet it was also your testimony that it could relate to Psychology, is that correct?
A. Definitely.

* * *

[272] Q. And you have church activities such as Bible Studies that maybe you have participated in?
A. Yes.

Q. Could those activities or participating in fellowship as has been defined by the students today fulfill the general objectives of Sociology or Psychology?
A. Could it fulfill that?

Q. Yes.
A. Possibly.

Q. Just as Interact could possibly, right?
A. Right.

Q. Dr. Findley, are there any classes at Westside High School that requires someone to be part of a particular activity?
A. I don't think so off the top of my head.

Q. How about Band? Doesn't that require you to be in the activity that is listed on Exhibit 63 as Band?
A. It requires you to attend those things, yes.

Q. Okay. Choir does, too, doesn't it?
A. Yes.

Q. Okay. Distributive Education, DECA, also does, correct?
A. Requires that they do what?

[273] A. (sic) Well, it says that "This organization is an extension of the Distributive Education class."
A. Right.

Q. Is DECA the same, if you will, as Band or Choir, that you have to be in the club?
A. No.

Q. Do you have to be in the Distributive Education class in order to take the club or to be in the club?
A. No.

Q. Does Math class at Westside High School, Dr. Findley, require the student to be in Math Club?
A. Does Math class or any Math class?

Q. Does any Math class at Westside High School?
A. Not that I'm aware of.

Q. Not that you know of. Does a student receive a higher grade in Math Club -- or pardon me -- Math class by reason of being in Math Club?
A. Do they receive a higher grade?

Q. Right.
A. Not for just being in the club, no.

Q. As a matter of fact, a student could be at Westside High School and not even taking any Math courses and could be a member of the Math Club, correct?
A. That's right.

Q. The same is true of the Computer Club, correct?
[274] A. That's right.

Q. You don't necessarily have to be involved in any of the Computer classes at Westside High School to be in the Computer Club, right?
A. Right.

Q. Are all of the clubs and activities at Westside High School volutary?
A. Yes.

Q. So it is true that a student at Westside High School can decide to be a member of one, two, three or however many clubs and activities they can become involved in, right?
A. That's right.

Q. They can also decide to not be a member of any of them, correct?
A. Yes.

Q. Dr. Findley, tell me, how is a club or how are clubs formed at Westside High School?
A. They can be formed by teacher request, student request, coming in and initiating them and we go from there, look at it, decide whether it meets the missions and goals, fits in

our overall mission and goals statement, and see if we can -- if we have a sponsor for it, someone who will sponsor it, and we have to make a determination at that point if we are going to have it or not. Finances enter into it. A number of things.

* * *

[276] Q. This decision-making process that you are talking about, is there a formal policy that is in writing as to how one would go about getting a club formed?
A. Not really.

Q. But it's generally the case, isn't it, that when a club is requested that at least Mr. Huston is consulted, along with yourself, to try to develop that club, is that correct?
A. That's right.

Q. And it is the school that selects the sponsor, right?
A. (Coughing) I'm sorry?

Q. It is the school that selects the sponsor?
A. Yes.

* * *

Q. Did Peer Advocates, when you were looking at it, relate to any of the required curriculum or elective curriculum [277] courses at Westside High School?
A. No.

Q. So why was it permitted to be formed?
A. Because it's another activity that would allow kids to become aware of how to work with others as service activity, something that our overall goals and mission would definitely endorse.

Q. So it was because it fell under the overall goals and mission of the school?
A. Yes.

Q. Where are those overall goals and mission found?
A. In our Board policies.

Q. Let me understand your testimony, your previous testimony, correctly, Dr. Findley. You are saying that all of the clubs are curriculum-related at Westside High School because they are either an outgrowth of a particular class or they are part of the mission and goals of the high school? Is that a fair representation of your answer?
A. I think so. I'd have to think about it. That just doesn't click with me right now.

Q. Well, let's just touch on Peer Advocates. You said that Peer Advocates was not related at all to the curriculum offered at Westside High School, right?
A. To the required and elective courses directly --

Q. Right.
[278] A. -- is what your question was.

Q. Right.
A. Right.

Q. And you stated that was true, right?
A. Right.

Q. It is not directly related to any of the required or elective courses at Westside High School?
A. It is related in the sense that we have service things that come out of Sociology, Psychology, in that same respect as other service activities would be related and --

Q. Well, take a look at Exhibit 14 and at Exhibit 17 again, Dr. Findley. Is there anything in either one of those exhibits that directs someone to take Peer Advocates or to be in Peer Advocates in order to comply with the objectives of Sociology and Psychology?
A. There is not.

Q. Is there anything in the descriptions found in Exhibits 14 and 17 that requires someone to be involved in service activities?
A. There is not.

* * *

[279] Q. And is this the Board policy that you were talking about that relates to the formation of clubs and activities at Westside High School?
A. It is.

Q. Paragraph Number 1, you notice that it says that the clubs and organizations are a vital part of the total educational program as a means of developing citizenship, wholesome attitudes, good human relations, knowledge, and skills, is that correct?
A. That's right.

Q. Dr. Findley, from your experience as a Christian, someone who has read the Bible and been in various church organizations, is it possible for a Bible Club to develop good citizenship?
A. Yes.

Q. You would hope it would, wouldn't you?
A. Yes.

Q. Is it possible for a Bible Club to develop wholesome attitudes?
A. Yes.

[280] Q. And you would probably hope that it would, wouldn't you?
A. Yes.

Q. Does the same also hold true for good human relations?
A. Yes.

Q. And it would also help to develop knowledge and skills, wouldn't it?
A. It could.

Q. As a matter of fact, in your experience, Dr. Findley, as an English teacher or as an English student, did you ever have the opportunity to read the best seller

throughout history, the Bible, in one of your courses or use it in one of your classes?
A. I never did.

Q. How about parts of it, like the Song of Solomon as prose or poetry?
A. I don't recall that.

Q. But it could be used for that, couldn't it?
A. It could be, yes.

Q. As an English teacher and as one who has taught literature, certainly the Bible is recognized as one of the greatest pieces of literature in all of civilization, isn't it?
A. Some people recognize it that way, yes.

Q. Would you at least place it in the top ten?
A. Yes.

[281] Q. Now, Dr. Findley, when a club is asked to be formed such as Peer Advocates was, do you then seek out a sponsor of the club?
A. In that case I believe the sponsor came forward.

Q. In other words, the teacher that came with the idea became the sponsor?
A. Yes.

Q. What if the student suggested a particular club or an idea comes to you through one of the seminars that you might attend as an administrator or whatever to form a particular club at the high school, how does a sponsor then emerge?

A. We would have to see if we could find somebody who we felt was appropriate to sponsor that or was willing to sponsor it.

* * *

[282] A. Yes, and Subsurfers has always been part of our curriculum.

Q. Is there a course at Westside High School that requires someone to be a participant in Subsurfers?
A. No.

Q. Is there a course at Westside High School that requires someone to be involved in scuba diving?
A. No.

Q. Do you know of any course that offers extra credit or a higher grade to someone by reason of having been in Subsurfers?
A. I do not.

Q. In fact, Dr. Findley, there are individuals who come in from the outside and participate in the Subsurfers Club, correct?
A. I don't know that.

Q. Well, Dr. Findley, you said your authority level or the activities were under your umbrella. You are saying that you don't know that there are people from the outside that come in to one of these activities and use the school facility during the club period?
A. In Subsurfers?

Q. Yes.
A. I'm not aware of that if they do.

Q. If there has been testimony like that, would you have [283] any reason to doubt it or to dispute it?
A. I would have to check with the sponsor.

Q. So you don't know for a fact that Underwater World comes into your school, the school that you're the Principal of, and teaches diving classes to certify people --
A. Yes, I am aware of that.

Q. Oh, you are. Okay. Did you know that took place?
A. That's not how I understood your question.

Q. So you are aware that Underwater World comes into the school?
A. Right.

Q. And teaches in the school?
A. Takes a Subsurfer, works with a Subsurfer class, yes.

Q. Pardon me? You confused me there. Works with a Subsurfer class?
A. Right.

Q. Is there a curriculum class called Subsurfers?
A. I'm sorry. Activity.

Q. Okay. So they work with a Subsurfers activity, right?
A. Right.

Q. And there is no class called Subsurfers, is there?

A. That's right.

* * *

[284] Q. Dr. Findley, I am showing you Exhibit 58 and ask you to review that.
A. (Checking exhibit) Okay.

Q. Have you ever seen Exhibit 58 before?
A. I don't believe I have.

Q. Do you have any reason to doubt its authenticity?
A. Not really.

Q. If there was testimony that this was available at your high school, would you have any reason to doubt that --
A. No.

Q. -- or any evidence contrary to that?
A. No.

Q. It does indicate under Roman number V there, doesn't it, that adults can participate and receive certification for 150 bucks?
A. It does.

Q. Is Underwater World in any way connected with Westside High School?
[285] A. No.

Q. Does Underwater World pay anything to Westside High School for the benefit of using the school and collecting money from students and adults during this particular activity?
A. No.

* * *

Q. We have had testimony, Dr. Findley, that some of the sponsors are actively involved in the club and others just kind of sit back and monitor. Would you agree that that's the way it generally operates in these activities?
A. It depends on your definition of "monitor."

Q. Does not actively direct, organize the activities or run the club.
A. I would tend to disagree with that. My own interpretation of how clubs are to be run is that the sponsors would be actively involved at some point, and that may be getting kids involved to direct the club. For example, when I was sponsor of Student Government, I would go in and work with kids but I didn't go in and run the activity, but I worked with kids all of the time. I met regularly with the [286] officers of the club and maybe we met in the summertime planning activities, and so forth, but kids ran the club.

* * *

[287] Q. Tell me, do certain club sponsors receive remuneration for sponsoring a particular club?
A. Yes.

Q. Is that a direct remuneration that they receive? Is that -- in other words, is it a separate check that they receive for being involved in a particular club?
A. Some do and some don't.

Q. Well, the ones that do, tell me how that happens.
A. That's agreed upon with the -- Mr. Huston has a salary schedule and we agree if salary for them or a payment for sponsoring a club.

Q. So you and Mr. Huston sit down or just Mr. Huston sends you a list or what?
A. Basically, he has a list and we've stuck with that fairly generally, and if there's an exception to that we talk about it, but basically he does that.

Q. Is there a basis for determining how much somebody might get for sponsoring a particular club?
A. We try to be -- we try to look at time and what involvement that will require and try to be fair about that, yes.

Q. In, for example, the Chess Club, how much would the Chess Club person receive?
A. I'm sorry, I don't know off the top of my head.

Q. He does get paid, though?
[288] A. Yes.

Q. Dr. Findley, can a student initiate or start a club?
A. Yes.

Q. And how would a student do that?
A. He could contact Mr. Huston or myself, Mr. Hering, and come and talk to us about it and we would get together and talk about that and decide whether that is something that

we felt came under our mission and goals, and if it did, then we would go on and look for a sponsor.

* * *

Q. So if someone were to go to you as the Principal, would you, as part of the management team, in all probability go to see Mr. Hering and Mr. Huston?
A. Probably. I would discuss it with them.

Q. That would be the normal procedure, right?
A. Right, at some point. Yes.

Q. And that's not a written procedure, is it?
A. No.

Q. It's something that has developed over the years?
A. Right.

[289] Q. Now, what is Mr. Huston's function in this whole thing if you go to him? Does he have a function in determining whether or not the club should be formed?
A. Definitely.

Q. And what's his function?
A. Well, he's -- his opinion is the one that, you know -- it falls under his responsibility and we generally try to consult and come to agreement there and I value his opinion.

Q. Who determines if a club meets the mission or objectives of Westside High School, you or Mr. Huston, Mr. Hering?
A. Ultimately that's my responsibility but we -- we will all discuss it.

Q. But the ultimate responsibility is yours?
A. Yes.

Q. What criteria do you use, Dr. Findley, in determining whether or not it meets the mission and goals of the school?
A. I look at the Board policy.

Q. And which Board policy are you talking about? Exhibit 71?
A. Yes.

Q. Is that the only thing you use?
A. I suppose. And experience, you know. You've got a feel for things. But I look at the Board policy.

* * *

[293] Q. You do recall, don't you, during that time frame of January of February of 1985 Miss Mergens coming to you with a [294] request to form a particular club?
A. That's right, I do.

Q. An you knew that she was trying to form a Fellowship Bible Club, correct?
A. She called it a Bible Club, I believe, yes.

Q. She called it a Bible Club?
A. Yes.

Q. And when she came to talk to you, you knew that she --
A. I don't think -- let me -- let me back up. I don't think she called it a Bible Club. She said she'd like to have a group of kids get together and talk about the Bible. She never used the word "club."

Q. But it was clear to you that she wanted to do that at Westside High School, right?
A. Yes.

Q. She wanted to do it after school when other activities met?
A. After school or before school, yes.

Q. She wanted to have a place in the school to meet, right?
A. Yes.

Q. Anything else about the request that you specifically remember?
A. I don't remember whether it was the first time she came to me or the second but she indicated to me that she [295] probably -- when I indicated that we couldn't do that, she indicated to me that she probably would pursue that, and I believe in one of those two instances she mentioned that she knew you.

Q. Did you specifically tell her at the first meeting -- withdraw that question. Did you deny her request that she had made at that first meeting?

A. Initially, I thought she was asking could she get together with a group of kids and talk about the Bible, and I said I didn't have any problem with that as long as they, you know, just did it on their own, and she said to me, "No, I mean I want to have a group meet that you will officially recognize," and I said at that point I could not do that.

Q. You denied her request at that time?
A. That's right.

Q. And that's during the first meeting?
A. I believe so, yes.

Q. On what basis did you deny the request, Doctor?
A. Well, a couple of things came to mind. One is immediately our Board policy that says -- you've got it in front of you, the third paragraph of that, and I had also -- I was familiar wuith (sic) equal access and that, as I understood equal access, basically what it was saying to me was that we would have a club or there could be a group of students meeting without a sponsor, discussing whatever topics they wished to [296] discuss and in no way could I have an effect or know what was happening in that group or control the subject of the group itself, and to me that was not -- did not fit our policies and it also said to me that it would be unsponsored and it didn't fit our policies of what -- of my interpretation of what the Board, who is representing the parents, said, and that was I think they expected they have a right to send their kids

to school and expect they would know what was taking place and I could no longer do that.

Q. Dr. Findley, did you deny the request because it didn't meet Board policy?
A. I think it was a combination of things, because of equal access, my understanding of that, and Board policy.

* * *

[297] Q. You said part of the reason that you denied it was [298] because of the Board policy. What was the other reason that you denied the request, Dr. Findley?
A. My understanding of equal access entered into it and I looked at it and it said that it would be a group of students who would be unsponsored talking about philosophical, political or religious ideas, and I could see some possibility of -- of an organization being formed that would talk about, say, communism or the Ku-Klux Klan or whatever, and kids -- we would have that actively taking place in our building, and parents are sending kids to school and they could go to that and there would be no way that I could stop a student from doing that, and I thought maybe the Board policy was saying we shouldn't allow kids to do that.

Q. In other words, you had no way of monitoring the group in what was going on and unless you could do that, you weren't going to allow the group to meet?

A. I didn't have an opportunity -- we didn't have a sponsor, or we could not control the subject matter. That's correct.

Q. So you did want to control the subject matter in whatever clubs took place at Westside High School?

A. In light of our mission and goals, I felt it had to fit there and i did not feel that this did.

Q. And because of the fact that it was religious, correct?

[299] A. The fact that it appeared to me that it was advocating a religious viewpoint instead of giving a study of a religion, you know, an objective kind of study.

Q. Dr. Findley, if Miss Mergens had asked to form a Philosophy Club at Westside High School, would you have permitted that?

A. It depends on it, and if she had a sponsor and what the subject was and if they were going to objectively study various philosophies. If it was just one, to advocate a philosophy, no.

Q. Dr. Findley, does Westside High School in fact actually monitor every club and what is said and what things are discussed in those particular clubs?

A. What do you mean by "monitor?"

Q. Have someone there present all the time that hears what's going on in the club and monitors it.

A. Well, they monitor it from the point of view that they know what the activity is intended to be, and, no, there's not someone there all the time but they have an idea and they can intervene in that, if necessary.

Q. How do you for a fact know then that communism or Marxism isn't being discussed in a club when the sponsor is not there?

A. It could be but then as far as I would be concerned it would be a topic that would not be part of the club.

[300] Q. The club is different than -- it would be a topic that the club was not intended to talk about, right?

A. That's right.

Q. Different from the classroom, though, where you have a teacher present all the time to monitor the discussion and the flow of the discussion, right?

A. Right, and to make sure both sides are presented.

Q. So the club structure is different in that respect, right?

A. No. I would think it's the same. The sponsor has got a responsibility for the content and what takes place in the club or activity.

Q. But he is not always there to monitor that, right?

A. Can't always be there. Kids go out and do different things. Kids meet various times to get together and practice, for example, for Drill Squad. There is no way the sponsor

could begin to meet some of the -- some of the time lines that young people set up to get ready for things. They couldn't possibly do it.

Q. So it is your testimony then, Dr. Findley, that the sponsor then is there to monitor the speech that goes on in the club?
A. No, that's not my testimony. That person is there to make sure that club is organized and follows the organization that is pre-arranged and described to us,and I've got [301] a trust in that individual that that is done.

* * *

Q. Yeah. "The kids are talking about Communism in Chess Club. They got to talking about the Soviet Union and now they're talking about Communism. What do I do, Dr. Findley? I'm the sponsor."
A. "Make sure you present both sides of the issue."

Q. Okay. Would you tell him to keep those young people from talking about Communism, though?
A. I would not. I would say, "Make sure you present both sides of the issue."

Q. Would you get rid of the Chess Club?
A. I would not.

* * *

[302] Q. At that first meeting in your office then, did you tell her at that time that she could not have the group?
A. I was -- I think what I told her was "I am reasonably sure you cannot and I'll do some checking and get back to you."

Q. And the reason that you were reasonably sure that she could not was because of School Board policies and what [303] you perceived as religion in the schools or what?
A. Well, from what I knew about equal access and what I explained earlier about equal access.

Q. When you said earlier that it was based on School Board policy, were you referring to Exhibit 71, which is I believe School Board Policy Number Fifty-Six-Ten?
A. Yes.

Q. What specific parts of that policy did you believe that would be violated by such a club?
A. Well, two parts of it, really, one of them sort of indirectly through equal access. The third paragraph I felt it violated and then, because of my concern about equal access and what equal access said to me was that you could have unsponsored clubs, it brought in the second paragraph then.

Q. When you say what you conceived of as equal access having unsponsored clubs, had you read the Act yourself?
A. Yes.

Q. And that is what you gleaned from the Act, was that the clubs had to be unsponsored?
A. Well, I understood it that groups could meet who just asked to meet, without a sponsor, an official sanctioned -- you know, an official, recognized sponsor by the District and I didn't -- we had never done that.

Q. But there could be somebody there that was a monitor, right, who watched over the activities of the group?
[304] A. Yes.

Q. That wasn't prohibited by the Act, right?
A. No, but when I interpret a sponsor, it is somebody who in my opinion has direct responsibility for the content of what takes place in those clubs or activities.

Q. Of all that takes place in the clubs?
A. Basically, for the general gist of an activity, yes. I don't think any sponsor could have total responsibility because you never know what individuals are going to do, but I mean they've got a responsibility for the general organization and planning of a club, yes.

Q. But in most of your clubs at Westside High School the students operate the club, don't they?
A. Under the direction of the sponsor.

Q. What do you mean, "Under the direction of the sponsor"? He tells them what to do?

A. He works with those kids and how that club is going to -- the content of that club. Regardless of what, in my opinion, the kids say, that individual, from my perspective, has the responsibility for the overall organization of that club. I mean that's who I would hold responsible.

Q. When you say "the content" of the club, you mean the speech that goes on in the club?
A. No. I mean the activities and the purpose, things they're accomplishing as they put together a plan of what [305] they're going to do in that club. That's how I look at when we get a sponsor and when we discuss it with the sponsor what I would expect.

Q. Why didn't you get a sponsor for the Bible Club?
A. I was never asked.

Q. But you assign all the sponsors for the clubs, you testified to that.
A. Right.

Q. So shy didn't you offer to find a sponsor?
A. Because I was interpreting that initial request to be a group of students to meet to talk about a Christian Bible Study and that they wanted to meet on their own, and that said to me -- I couldn't do that.

Q. But you didn't make the offer to Miss Mergens to have a club with a sponsor? You didn't offer to find a sponsor for her, in other words?
A. I did not.

Q. Was there any reason why you couldn't have found a sponsor for the club?
A. I don't know at this time. I didn't -- I didn't look into that.

Q. You and Dr. Findley are the ones that sit down together -- pardon me. You and Mr. Huston are the ones that generally sit down and find sponsors for clubs, aren't you?
A. Right.

[306] Q. Unless the sponsor comes forward to say, "I want to have a new club"?
A. Right.

* * *

[306] Q. The question of sponsorship never even came up really, did it, before you denied her the right to have the group?
A. Not that I recall.

* * *

Q. And Miss Mergens informed you the group would be [307] voluntary, didn't she?
A. Yes, although I've had several conversations with Bridget throughout the year. I mean we discussed it and sometimes we'd get pretty fiery in the discussion and just talk about what it was and why I was taking my stand and she was taking hers, and on one occasion I recall talking with Bridget and she mentioned to me she thought we needed this club at Westside High School because we had non-religious kids and she wanted to be able to get to those non-religious kids.

Q. Was this before or after the initial request?
A. It was after.

Q. Now, you said you felt like it violated Paragraph 3 of Exhibit 71. How do you feel that the proposed club violated Paragraph 3 of Exhibit 71?
A. That no club or organization shall be sponsored by any political or religious organization.

Q. Did she say that this was being sponsored by Word Outreach or her church that she was going to at that time?
A. She said she had been meeting with a group in Bellevue and I thought at that time mentioned your name.

Q. Did she say they were going to sponsor the group?
A. I, at the time, was confused about that. I wasn't sure.

Q. You didn't ask her, though?
[308] A. When I asked her who was going to meet, that's what she mentioned, that she had been with a group in Bellevue and they were going to come together and there was some kids that had been meeting and they were going to meet.

Q. She did tell you, though, that the kids that were going to meet were going to be Westside High School students only, right?
A. Yes.

* * *

[309] Q. My question is when you went to see Dr. Huston, did you tell him that you had already told Miss Mergens she couldn't meet?
A. I told him that it was my opinion at that time that I didn't think they could.

Q. Did you tell him that you had told her that?
A. That I didn't think they could, yes.

* * *

[310] Q. Is there anything in the mission and goals of Westside High School in Exhibit 62 that prohibit the type of club that was being suggested by Miss Mergens?
A. This is not Westside high School but I mean it's for the District.

Q. District 66.
[311] A. Okay.

Q. Is there anything in there that prohibits the type of club being proposed by Miss Mergens?
A. (Checking exhibit) Not that I see right now,no.

Q. Okay. Dr. Findley, then isolating away the School Board policies, conceivably could the club proposed by Miss Mergens have met the missions and goals of the school?
A. My understanding of the mission and goals has always been to give both sides and in that respect I would say no -- both sides of an issue.

Q. Did she tell you that she wasn't going to allow a particular group to attend?
A. She said it was a Christian Bible Study group.

Q. Did she say she was going to prohibit any ideas from being exchanged in there?
A. No. I assumed that.

Q. You assumed that anybody that was sharing anything other than a Christian idea was going to be tossed out of the club or what?
A. No. I just assumed that they were going to talk -- when she said, "Christian Bible Study," that that was going to be a study from a Christian perspective as opposed to studying it and comparing it to other religions or whatever.

Q. So from that standpoint you felt like it violated the missions and goals of the school?
[312] A. In my understanding, the way I've looked at it, yes.

Q. Is there any specific goal in there, though, that you can point to?
A. No.

Q. Or mission?
A. I suppose but it might be, you know, critical thinking. Those kinds of things mean to me seeing both sides.

Q. I believe that you said that some of the missions and goals of the school were to develop critical thinking, right?
A. Yes.

Q. Would a Bible Club have done that?
A. Well, it wouldn't have given both sides of the issue.

Q. Would it have helped to develop critical thinking?
A. I don't know. It could.

Q. It could. Could it help people develop logic?
A. Possibly.

Q. Social skills?
A. Sure.

Q. Interaction?
A. I would hope so.

Q. Those are all things that fall within the missions and goals of the school, right?
A. Right.

Q. Tell me, Doctor Findley, does Chess Club present both [313] sides of chess and checkers?

* * *

Q. You say that -- your testimony was, I believe, that [314] when a club was asked to be formed you review School Board policies before making a decision. Did you in fact do that before you told her that you didn't think the club could meet?
A. Well, I didn't immediately right there at that first meeting. I said I would have to check into it further but I didn't think they could.

Q. Dr. Findley, isn't it true that you really denied her the right to meet because of what the content of the club was going to be., i.e., Christianity or religion from a Christian viewpoint?
A. No, that's not true.

Q. Dr. Findley, I would like to have you look, if you would please, at your Affidavit which is Exhibit 61. I believe you have it in front of you. Turn to Page 2, the bottom of the page, Number 17, and I will read: "In the event of any one or more of the student clubs or organizations are determined by the Court to be non-curriculum-related and if the Court determines that Westside High School has a limited open forum under the Equal Access Act, I would recommend to the administration and Board of Education that it consider amending policies to discontinue such student clause."

Based on that, Dr. Findley, are you saying through this Affidavit that you would do away with the club system of Westside High School just to keep a Christian Club out?
A. No, that's not what I'm saying.

[315] Q. That's what it sounds like. What are you saying?
A. I am saying that if that kind of a -- if there is a group that comes in without sponsorship where a group can meet and discuss any subject and the Board of Education and the people of the District send their kids to school expecting that they will not -- that they will have some

expectation of what takes place there, my responsibility is to do what those people or the Board has asked me to do, and that is not -- if somebody comes in that building and we have a group meeting discussing a topic that may advocate Christianity, that I cannot prevent a student of theirs where they may expect them coming into the building from walking into that meeting and yet a parent may not want that to happen, and it may not just be Christianity or a Bible Study Club. It could be Ku Klux Klan. It could be Communism or whatever, and it's my feeling that the people of the School District have a feeling -- or they expect that that will not happen when they send their kids to a public school.

We have a captive audience. We have a whole gamut of ranges of feelings and so forth. I cannot -- I cannot do that.

* * *

[316] Q. Well, you're saying in this Affidavit that you recommend to the School Board if this Court rules that there is a limited open forum in Westside High School, that you would recommend to the school to do away with the club system.

A. Because it's a much bigger issue to me than a Christian Bible Club, Doug.

Q. It is not because you are a religious bigot, Mr. Findley -- Dr. Findley?

A. No, it's not because --

MR. DAUBMAN: Objection to the form of the question, Your Honor.

THE COURT: Yes, sustained. I think it is argumentative.

* * *

Q. I believe I have covered this briefly, Dr. Findley [317] but had the school itself, the administration, at the beginning of the school year '84-85 reached a decision concerning whether or not Westside High School had a limited open forum?

A. We had discussed it in an administrators' meeting.

Q. My question was had you reached a decision?

A. In the -- I will try to explain that. In the meeting it was expressed we felt, the District felt, that we did not have a limited open forum.

* * *

[318] Q. Dr. Findley, do you say that all the school clubs at Westside High School are sponsored, is that correct?

A. Yes.

Q. What is your definition of a sponsor?

A. Someone who establishes the organization along with us or how the club is going to operate, oversees the general activities of that club and what they do.

Q. Are those sponsors all employees of Westside High School?

A. Yes. We have some coaches for maybe a J.V. team that are paid by us as a coach.

* * *

[319] Q. It is true, isn't it, Dr. Findley, that you have sponsors, as you call them, that have a whole range or a wide range of what they do? Some show up all the time. Some don't show up quite as often. Some just show up like in Subsurfers and hand out the equipment and kind of sit back and watch the young people as they are doing their activities. That's [320] true, isn't it?

A. We have a range of how -- of how they let those clubs operate, yes.

Q. So that's up to the discretion, if you will, of the club sponsor and how the club is organized and all of that?

A. Right.

Q. Some of the clubs are almost student-run, aren't they?

A. They are not student-directed. Once a sponsor has worked with them, then they will -- they run the club, but the sponsor is aware of what is taking place in these clubs.

Q. You say, "aware." He doesn't direct what their activities are. He is there and present right?

A. One of the purposes, Doug, is to --

Q. Dr. Findley, my question was he is there and he is watching what is going on but he doesn't stand up and really lead the club, does he, like a teacher?

* * *

A. I think in clubs, when you work with kids, you try to develop their skills and you let them make some mistakes or otherwise they don't learn. If he directed everything they did, kids would not learn, and so he tries to direct -- or she -- and give them direction and maybe individually and how [321] to work through situations but they do not direct every move that kids make.

* * *

Q. You understood her testimony, did you, to be that the Drama sponsor didn't really participate very much, right?

A. Right.

Q. And that is okay with you, it meets with your requirements in the school?

A. The Drama Club is a group of kids, and remember, it's social, it's also -- it does some things, we've had mimes come out of that for things, it gets kids together to talk about a common activity. They might get in there and be involved in learning about what we do in plays and it's not highly structured but it is something where they learn about drama and are associated with kids involved in drama, and it may create an interest, but I -- I don't see the

director of that club coming down there all the time and saying, "We have an organized, specific activity every minute," when kids are socializing and talking about things that they are doing. That can happen in those clubs. There is no way we could control that with high school kids because they're social beings and they are going to be talking about some other things [322] and I think we've tried to work at that with kids so we don't come in and direct everything to the absolute letter so kids can't breathe. We tried not to do that.

Q. You said they are social beings. Isn't the school of Westside High School designed in the modular structure, the club system and all of that, meant to be a forum, if you will, for the free exchange of ideas?
A. Designed to be that way? It's a public school and we have a modular schedule and we expect that kids use their time constructively.

Q. Let's talk for a minute about publications of the school. You have a list of publications that emanate out of the school, right?
A. For example?

Q. Oh, the school newspaper.
A. That comes from a class, yes.

Q. And that class is overseen by a teacher, right?
A. Yes.

Q. And the teacher, if you will, allows the students to freely express themselves in articles, correct?
A. The guidelines for that, the teacher works with them so that they do not -- and I have confidence in that individual -- so that they do not criticize or minimize opportunities of kids or other people but we try to operate by the First Amendment.

[323] Q. Do you allow them to have the First Amendment right of freedom of expression through the press?
A. Right.

Q. You don't deny that to them, do you?
A. That's right.

MR. VEITH: May I approach the witness, Your Honor?

THE COURT: You may.

Q. Look at Exhibit 78 and see if you recognize that. That is Exhibit 78 for identification.
A. (Checking exhibit) It's the last copy of The Lance.

Q. And what is The Lance?
A. It's a publication of the Journalism class of Westside.

Q. Is this one of the publications that comes out of Westside High School?
A. What do you mean, "comes out," Doug?

Q. Well, is it written by students of Westside High School, parts of it are?
A. In a class, yes.

Q. And they go and get the advertising, if there is any in there?
A. They work through the class to do that, yes.

Q. The advertising that is in there helps to pay for the printing of the paper, if you will?
A. Partly.

[324] Q. The paper is free to the students, isn't it?
A. Yes.

Q. It is available every two weeks during the school year?
A. Yes.

Q. Is the teacher directed by you, if you know, or by anyone else from the school to not allow the students to publish anything in particular?
A. I don't know what he, you know, specifically told them they can't publish.

Q. That particular copy of the newspaper, Exhibit 78 for identification, has an article in it, doesn't it, about the confiscation of some videotapes, correct?
A. It does.

Q. And that relates, doesn't it, to the incident that took place with Mr. Huston?
A. It does.

Q. And you confiscated the videotapes or had them confiscated, right?
A. I took the videotapes, yes.

Q. You directed that they be confiscated?
A. I asked Mrs. Boe to get me the videotapes, yes.

Q. And who is she, Dr. Findley?
A. She is the teacher of a Cable class, a Cable TV class.

Q. And that's a class at Westside High School that does [325] what?
A. It's probably a P.R. class as much as anything for Westside High School and kids leaning how to work in a television studio.

Q. Now, you didn't keep the young people that are in the Jornalism class or whatever from writing about your confiscation of the tapes, did you?
A. I did not, no.

Q. But at the same time you did confiscate the tapes or had them confiscated from this particular class, from the students, right?
A. I took the tapes because in the past we have shown tapes the following day in a TV showing room of rallies, and I felt the rally was inappropriate and, therefore, in no way could I defend that with parents if we showed it again. That had to be my responsibility.

Q. Isn't it true, Dr. Findley, that you took the tapes under threat of expulsion of those students that had the tapes?
A. I -- when I took the tapes, Doug, I had never thought about that yet.

Q. You never said to somebody that if the tapes didn't turn up, that they were going to be suspended?
A. That's right, I did not say that.

MR. DAUBMAN: Your Honor, I want to object to this line of questioning as irrelevant.

[326] THE COURT: I am not sure what the relevance of this is, Mr. Veith.

MR. VEITH: Your Honor, I think the relevance is that in one instance we find Dr. Findley agreeing that the students have First Amendment rights and he is going to protect them and then he turns around and he is denying them certain First Amendment rights --

THE COURT: Well, Dr. Findley isn't necessarily -- and his views are not the sole focus here. I sustain the objection. I think we have an argumentative line of questioning that doesn't prove or disprove very much as far as this lawsuit is concerned.

Q. Dr. Findley, as far as the newspaper is concerned, there is no prohibition then as to what is printed there, right, other than that it is in good taste, right?
A. That's true.

* * *

[333] Q. Dr. Findley, are you familiar with the club known as Quill and Scroll at Westside High School?
A. I am.

Q. And what is your understanding of what that club does?
A. That club primarily plans the recognition banquet for students on Year Book and in the newspaper at the end of the year, puts together the plans for that and takes care of the plaques or the sheets or whatever they get. It's a -- it's similar to National Honor Society. It's an awards -- a thing that plans an awards ceremonies for kids for work well done, things accomplished, and at that banquet they announce their editors and the photographers et cetera for the next school year. So it's kind of a recognition end-of-the-year thing that is a national organization, as well, in the Journalism area.

[334] Q. Is that, in your opinion, related to the curriculum also?
A. Yes.

Q. In what way?
A. Well, it recognizes achievement and we do that.

Q. So it is a recognition club that is related to the curriculum, from that standpoint, is that correct?
A. It kind of grows out of that class, too. It comes from that class, as well.

Q. It comes out of the Journalism class and recognizes Journalism students?
A. Right.

Q. And you talked about the National Honors Society. The National Honors Society is also, if you will, a recognition club, right?
A. It recognizes leadership, service, character and scholarship.

Q. And that has a sponsor at Westside High School?
A. Yes.

Q. It's not directly tied to any class at Westside High School, though, is it?
A. Not to any one class, no.

Q. One of the ways you get into National Honors Society, in addition to those other things is if you have a certain grade point average, correct?
[335] A. Yes.

Q. That's the only --
A. That's nationally established, yes.

Q. That's the only relationship, if you will, to grades of the curriculum, right?
A. To the curriculum?

Q. Yes.
A. Well, obviously it recognizes service and character and leadership, all of which we try to encourage in young people.

* * *

[337] Q. So in a particular case of outside groups coming in, for example, you do have the outside group that comes in from Underwater World to Subsurfers, right? --

A. Uh-huh.

Q. -- but they don't pay anything to use the facility, do they?
A. Not to my knowledge.

Q. Would there be someone that would have better knowledge than you as to whether or not Underwater World pays?
A. Mr. Huston would, probably.

Q. Can Boy Scouts use the building?
A. They have, yes.

Q. Under what restrictions? Any restrictions?
A. They've used their gyms at times, you know, if they want to come in and have an activity, to play ball or something, we let them do that.

Q. What about a church group?
A. We've not done that.

[338] Q. Has any church group, to your knowledge, ever asked to use the facilities?
A. Oh, yeah.

Q. And they have been denied the right to use the facilities?
A. They've asked to use it for religious services and so forth and we have not done that, according to the policy.

Q. Okay. When you say, "According to the policy," you are talking about according to this policy that is 54 and 55?
A. Yes.

Q. Have you ever been the one to make that determination and refused the right for a group to meet?
A. Not -- not where it was my responsibility, no.

* * *

[342] Q. Did Miss Mergens ever mention to you, Dr. Findley, that there might be someone interested in sponsoring her club?
A. She may have, yes.

Q. And did you -- who was that individual, if you remember?
A. I believe it was Rob Jahns. (phonetic)

Q. And did you ever meet with Mr. Jahns about maybe sponsoring a club?
A. No.

Q. You sponsored clubs before, haven't you, Dr. Findley?
A. Yes.

Q. And you sponsored, I believe, Student Government?
A. Right.

Q. What is that? Is that like a representative from each class who meets together to establish student policies in the school?
[343] A. Yes, it's similar to that.

Q. What class or curriculum does that relate to, Dr. Findley?
A. Well, it relates to building citizenship and understanding of the governmental process. We've got American Government class. We've got

Political Science classes. We have a number of things that would relate to that.

* * *

Q. Dr. Findley, that's the course objectives of American Government, correct?
A. Yes.

Q. Is there anywhere in there that it recommends or sets forth that Student Government is a requirement to take this course?
A. No.

Q. You are not required in that to take the course then, right?
A. No.

[344] Q. When you were the sponsor for American Government did you ever help to have someone receive extra credit in American Government because they were part --
A. No.

Q. -- of the Student Government?
A. No.

Q. So does that relate to the curriculum again under the general goals and objectives of the school?
A. I believe, and I don't recall right off the top of my head, it relates to building good citizens and I think that's mentioned more than one place, without my reading all through that.

Q. To the goals and objectives, is that right?
A. Pardon me?

Q. It relates to the goals and objectives of the school?
A. Mission and goals.

Q. I'm sorry. Mission and goals. What did this particular club do when you were the sponsor.
A. They do a number of things. They -- I believe their constitution says that they're to work at promoting or making life appropriate, school life appropriate for students or something like that, and they try to provide activities that will get kids involved in part of Westside High School. For example, they do a number of things. They have -- they might sponsor a dance that at the start of the year would get [345] kids together and get them to know one another. They provide a scholarship, a couple of scholarships, for kids from money they make each year. They have an essay, the Student Board Advisory Scholarship. They have a number of activities, for example at winter break time they have a holiday activity for parents. If they want to bring their young children in, they provide cartoons and have clowns come and those kinds of things and take care of the children in the afternoon while the parents shop.

They also deal -- allow students in various homerooms who have representatives to Forum, which is another house of the government, there are two houses, to bring forward ideas through Forum to the attention of the Student Advisory Board who works with their sponsor,

and if they have a request of the administration they do that. So they do that kind of representative work, as well.

Q. Did you ever find in Student Government that diverse political ideas were exchanged?
A. There may have been. Generally those kids don't get in heavy political discussions but they could.

Q. You never prohibited them from doing that, did you?
A. No.

Q. Did you ever insure that -- stand around to insure that the discussions were not one-sided if that happened?
A. Did I ever insure it? If I was there and present, [346] I would have expressed both sides.

* * *

Q. Did we ever talk about what a non-curriculum-related organization would be?
A. Yeah.

Q. Well, we've had discussions. I don't know if they were anything official, but we talked about many of the things I've related, that a non-curriculum-related club would be something where individuals would have an activity that would advocate something that would not give both sides of the issue, and again where parents may expect to send their kids to school and not have that option available for them if they would just walk in, without any control over the

content of what's being discussed, by the school itself. I think we -- you know, we talked about it generally.

* * *

[347] Q. Dr. Findley, are there any unsponsored student groups that meet at Westside High School?
A. No.

Q. There are not?
A. Not that I can think of.

Q. What, Dr. Findley, is Ski Club?
A. It's an activity, really. It's a one-time thing that somebody takes. It's a trip. It's a trip where they have one trip and it's really not a club. That's a misnomer.

Q. It's an activity where at least someone that is listed as a sponsor gets a group of students together to go to Colorado, right?
A. Yeah. We have a number of things throughout the year where kids go on or are requested to go on various ski trips and it takes them out of school. We provide a ski trip so that we don't have kids taken out of school so much, and it is a trip.

Q. There are meetings that are held before this ski trip?
A. Just to explain -- to explain to parents and kids what's needed, the cost and so forth.

Q. There is a sponsor assigned to it, isn't there?

[348] A. Yes, but he's really to -- really to set it up and work with parents and kids so they know it is a trip.

Q. Is the sponsor a teacher or an administrator from the school?
A. Yes.

Q. And so is this an officially sponsored trip of Westside High School?
A. It is.

Q. Is it voluntary?
A. Yes.

Q. If I understand your testimony then correctly, you are saying that this doesn't fall into the school activities?
A. It's an activity. It's not a club.

Q. It's not a club. Are there any other activities of the school that are not clubs that are sponsored by the school?
A. Oh, there are all kinds of classes and stuff. I assume you're leaving that out. But I don't think of any, Doug.

Q. The Ski Club or the ski trip is the only one you can think of?
A. That I can think of right now, yes.

Q. Aren't the kids that go on the ski trip gathering together because of their interest in skiing?
A. I would assume so.

[349] Q. That's why they go on the trip, right?

A. I assume they want to go ski, yes.

Q. And it's a trip of Westside High School students, right?
A. It could be although I don't know that they're all necessarily Westside High School students.

Q. Do you open it up to other students?
A. I don't think so. I think they're, you know -- I just don't know if we have let other kids go on that trip or not. I don't think so.

Q. Another club at Westside High School is Chess Club, right?
A. Right.

Q. Is that a voluntary club?
A. Yes.

Q. Okay. If students, for example, ceased to attend Chess Club, say the membership in Chess Club went down to maybe two students and it did that for a couple of years in succession, what would happen to the club?
A. It depends. We've probably had two or three or four or five students in it sometimes anyway and it continues to function.

Q. If that happened for a long period of time, what would happen to the club?
A. I think right now we'd continue to do it because we [350] know it kind of comes and goes with the kids that come in, interest in it.

Q. Have you had some clubs that have ceased to exist because of interest or lack thereof?
A. I'm sure we have.

Q. Can you think of any offhand?
A. Not in my time as Principal, I don't think of any. I don't think they've quit functioning. They may not -- you know, they may not have kids coming but -- I'm not aware of it.

Q. Dr. Findley, going back up to ski class of Ski Club or whatever it is, is the sponsor for that paid?
A. Only through if they set up the trip and they get the kids involved in that trip and they -- their way is paid as a part of that.

Q. You pay their expenses then?
A. Yeah, through what they collect from kids. We have had other teachers, Doug, for example, sponsor or work with an organization maybe that wouldn't be directly sponsored by Westside High School or it could be to take kids to Europe and the way they get there is they get so many kids and through a travel agency and it pays their way.

* * *

[353] Q. Dr. Findley, if someone were to come forward to form a group and would agree to sponsor a group and then say, "I don't want to be paid anything for it," would you object to that sort of thing?
A. Probably not.

* * *

[354] Q. Dr. Findley, do you believe that Westside High School is a place for controversial subjects to be discussed within the curriculum of the school and --
A. Under teacher direction, yes.

[355] Q. And so you have no problem with controversial subjects being discussed in the classroom under teacher direction or even in the clubs, right?
A. Right.

* * *

Q. Do you believe that Westside High School students are mature enough to handle controversial subjects such as abortion?
A. I believe it will vary with age, Doug.

Q. By and large, do you think the students are able to --
A. I can't answer that.

Q. -- handle that?
A. I think it will vary with age and background and I -- I have mixed emotions about when kids are ready for that and I am sure lots of people do.

Q. But it is something that is presented in the high school, isn't it?
A. Yes.

Q. In classroom situations?
A. And I believe it is presently primarily at the senior level.

Q. Things like birth control are presented in the high [356] school?
A. Uh-huh.

Q. So it wouldn't be unusual since by your definition the clubs are co-curricular, it wouldn't be unusual for the same sorts of things to be discussed in clubs too, would it?
A. We would have to look at what the clubs had asked to do and if they -- if the club was -- you know, I don't know what that would come under, but we would have to look at that in terms of mission and goals, and then again make sure that all the sides of that are presented.

Q. Well, for example, if in Drama Club the Drama Club got into a play and the play had some things about sexual preference, you wouldn't expect the sponsor of the club to stop the kids from discussing sexual preference that happened to come up during the club, would you?
A. If the instructor was there and made sure that that was presented fairly.

* * *

Q. To you knowledge, Dr. Findley, has Planned Parenthood ever been allowed to meet at Westside High School?
A. To meet?

Q. To be present at Westside High School?
A. it has come in to classrooms, yes.

Q. It comes in and makes presentations, doesn't it?

[357] A. Yes. It doesn't meet as a group in our building, no.

Q. But they are allowed to come into the classroom and make presentations on birth control?
A. After discussion with our teachers and what the purpose of the class is and so forth, yes.

Q. But they do come into the classroom?
A. Yes.

Q. Is this an elective class that they go into?
A. Yes.

Q. Do kids get a grade for being in that class?
A. Yes.

Q. Have you seen the Planned Parenthood presentation?
A. Yes.

Q. Is student attendance required for that class?
A. No.

Q. They were permitted to opt out?
A. Yes.

Q. Did they have to give a reason why they were opting out?
A. No, although I am sure the instructor says, you know, when they talk to the student, "Why are you leaving?" or "Why don't you want to be there?" rather than just saying "I don't want to come today." There's got to be some reasonable decision made there.

* * *

[358] Q. Has anyone ever presented hypnotism or Transcendental Meditation to students at Westside High School?
A. I know of --

MR. DAUBMAN: Objection, Your Honor, on the grouds of relevancy.

THE COURT: Overruled. He may answer.

A. I know of hypnotism.

Q. Having been presented in the classroom?
A. Yes.

* * *

[359] Q. What type of criteria is used in determining whether or not groups like this can come in and make a presentation at the school?
A. Usually when it's a subject that may be one where it's controversial, the teacher is expected to inform me of it and we need to talk about it and decide if we will, you know, do it, and then we also make sure we give kids an option of whether they are going to be there or not.

Q. To your knowledge, did any group ever apply for permission to come in and give a presentation and have that request be denied?
A. Not to my knowledge.

Q. Do you recall the Ku Klux Klan being denied permission to come in?

A. We had some speakers, some Ku Klux Klan speakers, come in who wanted to come in and speak and we did not let them.

Q. Did they want to come into the classroom and speak?
A. Yes.

* * *

[361] Q. The club that was set forth by Miss Mergens to you, if it were to be permitted at Westside High School, do you [362] believe that the students in general at Westisde (sic) High School would perceive that as the school's advancement of one religious belief over another?
A. It could. Some might.

Q. Do you think very many of them would?
A. I don't know.

Q. You have been an educator for a number of years, Dr. Findley. You don't think that you have an opinion as to how large a group of them would, whether it would be 10 per cent of them, 20 percent?
A. I wouldn't want to speculate on that.

Q. Do you think if the school issued a disclaimer, that that would help the students understand better?
A. It might.

* * *

Q. Dr. Findley, in your opinion would it be appropriate if a teacher at Westside High School were to wear a button to school advocating a particular sexual preference?
A. Would it be appropriate?

Q. Yes.
[363] A. No.

* * *

Q. Is there a policy that exists that sets forth what would be done?
A. I'd have to review that, Doug. I wouldn't know off the top of my head.

Q. What would you, yourself, do?

* * *

THE WITNESS: I'd ask them to remove it.

Q. If a student or a teacher were to wear an arm band to school protesting aid to the Contras, what would you do in that case?
A. I'd allow them to wear it.

Q. You would?
A. Yes.

Q. How about a button protesting nuclear energy or nuclear war?
[364] A. I'd allow them to wear it.

Q. Please distinguish for me what the difference would be between the first instance and the last two.

A. I think the one is much -- the first one is very controversial and I wouldn't be comfortable with a staff member advocating that right now without somebody -- I mean, within in front of a group of kids and nobody else there to contest that each time they saw that button. I don't think that would be fair.

* * *

Q. Do you believe that allowing a teacher to wear any of these buttons would in fact to cause the student body in general to believe that this was an endorsement by the school of that particular stand?
A. It could.

Q. It's not very likely, though, is it?
A. Well, it may be. For some kids, it very well could.

Q. How about, Dr. Findley, a button that says "Jesus is Lord," would you permit that to be worn?
A. Yes.

Q. By a teacher also?
A. I'd discuss that with them. I would discourage that.

Q. Do you have any policy that you would try to enforce?
[365] A. Similar to what we have talked about. I just don't think they should be advocating one thing without some other -- a member of the staff doing that gives an example to kids. You've got to have the other issue or the other side of that thing

presented and I think it's much different when a member of staff does it than when a student would do that.

* * *

[368] Q. Some time in one of those meetings you suggested that she use the church across the street, didn't you?
A. I suggested that she might check into that and -- and contrary to what Bridget said, if I recall it correctly, I suggested that she might use that and that we had a good relationship with the church and I would work to help them get that set up, if they wanted to.

Q. But you wanted her to initiate that request of the church, right?
A. No. I don't remember that that way. I remember it a different way.

* * *

[369] Q. Why did you suggest the church across the street?
A. I thought if there was a place nearby that they wanted to get together and it was convenient and fairly close, they could still meet.

Q. Did you have open classrooms available in the school?
A. Sure.

Q. Do you believe the policy that currently exists at Westside High School promotes the free sharing of religious ideas?
A. Which policy?

Q. Policies of the School Board.
A. That it promotes what?

Q. The free sharing of religious ideas?
A. Does it promote that? It doesn't discourage it.

Q. Do you believe that the policy of Westside High School or of the District, rather, is to not discourage the free exchange of ideas concerning any subject, like religion, politics?
A. I believe the policy is set up so that we have -- we discuss or there is a discussion of those and if both sides are presented.

Q. Dr. Findley, Westside High School has, I believe, a modular type system, is that correct?
A. Yes, that's right.

Q. What is that? What does that mean?
[370] A. It's a schedule that repeats itself every five days. Students would have classes that meet but would not necessarily meet straight across the board as in a traditional schedule so there wouldn't be Period 1 every day. It might be Period 1 on Monday and a different period on Wednesday, Thursday and Friday, or it might meet four days a week or whatever, and it allows students unscheduled time to study, to gather information, to meet with teachers to make some decisions about how they're going to study and learn. It is built on the idea that we will help develop responsibility, help develop kids to become more responsible in how they use their

time, in sort of a laboratory type situation, so that there is some supervision and there are some rules and guidelines that kids have to function under.

Q. But in general it is to develop responsibility, to allow them the freedom to possibly more about and to possibly exchange ideas?
A. Yes, and it's -- it's done so -- so that sophomores or the youngest kids coming in are more heavily structured than seniors, and we try -- we try to build in their time so they have fewer decisions to make and we make more of them for them, and the older they get the more we work with them to make those decisions.

* * *

[380] THE COURT: All right. And now specifically [381] let's go back to Interact, which I understand is a club that has some connection with Rotary International, is that right?

THE WITNESS: Yes.

THE COURT: And I noticed in one of the exhibits here it is limited to male students only, presumably because Rotary International is limited to men only?

THE WINTESS: Right.

THE COURT: Is that the rationale there?

THE WITNESS: I would think so. Z Club is girls and that's kind of a counterpart to it.

THE COURT: I see. Well, now, one of the issues here is the forum of ideas and the interchange and the interaction of ideas insofar as whether you have a limited open forum, an open forum or a closed forum, and I think we have probably wrestled that problem around extensively since you've been here, either as a witness or watching the trial. I'm not a Rotarian but I eat lunch over in the hotel once in a while and as I come out the north door there is an office there that has a Rotary creed or something up on the wall, "Is it fair," and I don't remember, there's four or five things. Now, in this Interact Club is that an idea that is promoted as part of this club with the students that participate?

THE WITNESS: I -- I don't think it's promoted to any great extent. I don't think you could find kids that [382] would know what that was.

THE COURT: Is that contained within the literature that is used by the club to the end that those ideas, which I'm not being critical of, you understand --

THE WITNESS: Right.

THE COURT: -- but I just noticed them up there, if this is a student club that is related I am curious as to whether this thrust is part of the thrust of the club?

THE WITNESS: I've never seen it if it is and I've never heard it discussed with kids.

THE COURT: And what do they do then? You said there was service -- your policy promoted service emphasis and then service projects. What did you mean by that?

THE WITNESS: That will vary. They might collect food for the Pantry or something like that and it will depend on how active those kids, working with their sponsor, and how many service projects they want to have.

THE COURT: So from that standpoint, some of these clubs at least do have "Be of service to your fellow man" and "Feed the hungry" --

THE WITNESS: Yes.

THE COURT: . -- and so forth as guiding principles, is that correct?

THE WITNESS: Yes.

THE COURT: -- and so forth as guiding principles, is that correct?

THE COURT: Well, yeah, that might be it. They might -- I don't know what other -- they've had other activities [383] that they've done, yes.

THE COURT: All right. I have no other questions.

* * *

[385] JAMES A TANGDALL, Ph.D., called as a witness by the plaintiffs, being first duly sworn, testified as follows:

* * *

DIRECT EXAMINATION

BY MR. VEITH:

[393] Q. Dr. Tangdall, how would you, if somebody asked you to define "club" as it is used at Westside High School, how would you define it?
A. Well, I would define a club as -- as a school organization that is made up of students that has a faculty sponsor for the purpose of promoting the -- the development of the students in that school.

* * *

Q. On that date I asked you how you defined a club and I believe your answer was, "It was any group that we would approve and assign a sponsor to, a faculty sponsor. They would meet in school under the purview of our Board policy." Do you still agree with that definition?
A. Generally I would agree with that.

* * *

[394] Q. What's the procedure of Westside High School if you know in establishing a club?
A. Well, the procedure that -- that we had or at least that I had when I was Principal is very, very similar to what Dr. Findley has already described, that if a sponsor or a student is interested in the formation of a club, they will approach Mr. Huston or myself or could apporoach (sic) another [395]

administrator about that possibility and indicate what the purpose of the club is going to be and sit down and discuss it with one of those administrators. Generally speaking, we would -- we would discuss that and make some kind of a decision whether we were going to proceed with it.

Q. This is an unwritten policy, isn't it --
A. That's --

Q. -- or procedure, rather?
A. That's correct.

Q. How one goes about forming a club?
A. That is correct.

Q. It could be teacher-initiated, couldn't it?
A. Yes, it could.

Q. It could be student-initiated?
A. Yes, it could.

Q. Could it also be a club initiated from the outside?
A. A club initiated from the outside?

Q. Somebody comes in and says to the school, contacts you or Dr. Findley or Mr. Huston and says, "I've got an interest area that I would like to have you explore at the school." Say computers, for example, if you didn't have one.
A. It's certainly possible.

Q. Do you know of any clubs that have been started that way?
A. (No response.)

[396] Q. Could a parent suggest a club and try to get one started?
A. Do you want me to back up and answer the first question? Off the top of my head I do not know of any that have been started that way but they very well could have.

Q. Could a parent start one?
A. If the parent would approach Dr. Findley or Mr. Huston or myself or a teacher and we felt that there was support and felt that it adhered to our policies, it could certainly -- that idea could certainly originate with a parent or someone outside.

Q. If one of the individuals who wanted to initiate a club came into contact, say, with the Principal or even you as Superintendent concerning the club, who would eventually authorize the formation of the club if it is found to be within the policies of Westside High School?
A. Within the policies of Westside High School or of the School District policy?

Q. Well, the School District policy.
A. Okay. The -- if they approach the high school administration and they felt that it fell within the School District policy, they certainly could initiate that club.

Q. And it would not ever reach your attention that such club had been formed?
A. Other than a notification, you know, that that's what [397] they were going to do and they had a sponsor

and that it was what the club was about. But they certainly had the authority to start that club.

Q. Are they required to notify you as the Associate Superintendent of the formation of the club?
A. Yes.

Q. Is that part of some procedure or is that just some sort of a written rule?
A. Well, it's an unwritten procedure that they would notify me of any clubs or activities that they started.

Q. Any changes like that that take place in the curriculum or co-curriculum, you have to be notified of?
A. That is correct.

Q. Is there any kind of a check list or memo or anything like that that is usually prepared in such a case?
A. No.

Q. Is there a requirement to notify you -- is the administration of the high school required to notify you if someone has asked to form a club but such a club has been denied?
A. No, there's no guideline to indicate that that has to occur.

Q. To your knowledge, has any other club been denied access to Westside High School since you have been there as either Principal or Associate Superintendent?
[398] A. As -- when I was there as Principal, we had a couple or three occasions when we denied an activity

to occur. One instance I can think of was girls' softball, which we had been approached by people who had formed girls' softball. I think we had another instance of -- of a soccer club early in the '70s, a soccer activity organization.

Q. What was the reason for the denial of the girls' softball at that time?
A. Well, it was a combination of things. One was facilities to -- practice facilities, diamonds; financial considerations. Also, the Metropolitan Conference that we participate in in inter-scholastic athletics did not sanction or did not have that support so we would not have had competition. Those are basically the reasons.

* * *

[400] Q. The requirement, as I understand it, in order for a club to be formed is that it has to meet the policies of the School Board and also needs to fall within the overall mission and goals of the school system, is that a fair statement?
A. That is correct.

Q. Another requirement would be what? Student interest?
A. Certainly. In order for the club to function, we would have to have student interest and we would need to have the interest and ability of a sponsor to sponsor the club.

Q. The school really finds the sponsor, doesn't it?

A. Well, the school approves the sponsor. Oftentimes students will suggest a sponsor for various clubs but we may or may not approve that suggestion.

* * *

[401] Q. Is there a requirement, Dr. Tangdall, that a sponsor be teaching any particular course in order to sponsor a particular club?
A. No, not necessarily. We are interested in the interest and the experience of the person for that position.

Q. So, in other words, you could conceivably have a History teacher sponsoring a language club, correct?
A. If they had a good awareness of multicultural understanding and an awareness of the Foreign Student Exchange Programs and strong interest, it's possible. We have never had that occur but I imagine it could happen.

Q. Would you define for me what a sponsor is as far as the clubs and activities are concerned at Westside High School?
A. Well, a sponsor is a person that we would employ to -- I think to plan and coordinate and direct the activities of that club.

Q. How active does a sponsor usually participate in a particular club?

A. Well, it will vary tremendously. It will vary [402] tremendously from club to club and from organization to organization, just as the student participation varies tremendously.

Q. So some sponsors may participate very actively to the extent of organizing the activities for the club and leading the activities and other might be considerably less than that?

A. Well, I think that all of them will -- will assist with the planning and the directing of the activities, but some sponsors will get directly involved from meeting to meeting and be up front in their leadership role. Others, depending again on the size of the enrollment in that club and the purpose of the club, will take a much more -- or a much less visible position and -- and if they feel that they have the right leadership and the right officers to conduct the activities, then they will take a much less visible and a much less direct role on a -- on a daily operation of the club.

Q. The whole purpose, Dr. Tangdall, of the club system is to provide an outlet for the students in varying interests here, isn't it?

A. Would you repeat that question?

Q. The real purpose of the club system at Westside High School is to provide an outlet for students in various areas of interest that they might have, right?

[403] A. Well, that's a purpose. That's not the total purpose. The real purpose -- the real purpose of the

club system at Westside High School is to promote the total development of that child within the mission and goals and objectives of our school system. And that's the purpose of the --

Q. And what are the goals and objectives that you're talking about?

A. Well, the goals and objectives are the goals and objectives that are adopted by the Board of Education and that I think are certainly available to people. I can't enumerate them off the top of my head but certainly community -- effective citizenship, development of effective citizenship and those kinds of things are part of those goals.

Q. You have a club, I believe, at Westside High School that is called Ski Club, is that correct?

A. No, that's -- I think my deposition alluded to that, also. It's a -- that is not a club per se. That is really a misnomer. It's an opportunity for kids to go on a ski trip and hopefully our purose of doing that is so that kids would miss less school, that we would organize and sponsor that trip to go at an appropriate time when kids would not be missing school, but it is a ski trip.

Q. Dr. Findley -- Dr. Tangdall, I'm sorry, do you know whether Ski Club or ski trip as you call it is something that appears in the schol Year Book?

[404] A. Oh, I'm sure if they had a ski stip that year, that it probably appeared. There are years that the ski stip never got off the ground and consequently there were no ski trips, so I don't suppose it appeared in the Year Book. Depending on the year, I'm sure that it appeared as some writeup of that particular trip.

Q. As a club?
A. In the Year Book, it's hard to say how they mentioned it.

Q. Okay. Is the Ski Club-slash-trip a school-sponsored activity?
A. Yes, it is.

Q. Is it sponsored by someone who is a teacher or an administrator within the school?
A. Yes, it is.

Q. Don't you, in fact, assign a sponsor?
A. We assign a sponsor, yes.

Q. So it is a school-sponsored activity, correct?
A. It is a school-sponsored activity.

Q. Do you allow them access to make announcements on the bulletin board and through the intercom system of the upcoming trip.
A. Yes, we do.

Q. Is it something that is open to Westside students only?
[405] Yes, it is. Only Westside students.

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* * *

[408] Q. Are there any requirements that have to be fulfilled for someone to sponsor a club? You have to be a teacher, right?
A. They -- they will be a faculty member. It could be an administrator. They basically have to -- I think I indicated this the other day, in previous testimony when we were talking [409] about sponsors, what the definition, what they did -- but they have to direct -- as far as we are concerned, their responsibilities are to direct, coordinate and plan the activities for that particular club.

Q. Depending upon what club it is, they may take a real active role and they may take to a degree a passive role, isn't that correct?
A. They will take an active role with clubs in the initial planning and working with the officers. Some clubs, depending upon the leadership, the student leadership, and the involvement and the activity of those clubs, will function with much less direction from the sponsor than others, but initially the sponsor is to take an active role in -- in directing and planning the activities for those clubs.

* * *

[410] Q. You are familiar, of course, with the club known as Interact, correct?
A. Yes, I am.

Q. You understand that's a club, if you will, to a degree associated with the Rotary Club of America, is that correct?
A. That is correct.

Q. Did you know that the students who attend Interact are encouraged to attend Rotary Club meetings on various occasions?
A. At various times throughout the year they will invite students, if they wish, to a Rotary meeting. It's not often that they attend but they have attended in the past.

Q. And the students do know that the club is associated with Rotary, correct?
A. I am sure that they probably do.

* * *

Q. Dr. Tangdall, how is Interact then associated or directly curriculum-related at Westside High School?
A. Well, Interact Club is part of our curriculum, is [411] part of the co-curricular activities and it's like I've indicated to you before, that it is certainly one of the purposes of Interact, is to develop citizenship and community involvement on the part of our students. We think that is an important aspect for the development of citizenship, and that certainly is consistent with our mission and goals of the school and certainly an extension of our Social Studies, one of the objectives and goals of our Social Studies curriculum.

MR. VEITH: Your Honor, could I retrieve an exhibit, please?

THE COURT: Yes.

MR. VEITH: Exhibit 13. May I show that to the witness, please?

THE COURT: You may.

Q. Take a look at Exhibit 13, please, Dr. Tangdall and when you've had an opportunity to examine it, if you will look back up at me?
A. (Checking exhibit). Yes.

Q. What is that particular exhibit?
A. Those are the objectives of the Social Studies 10 class at Westside.

Q. Do you see anywhere in those objectives a reference to Interact Club or Interact as being something that is in the objectives?
[412] A. Nothing specific in these objectives.

Q. It's true, too, isn't it, Dr. Tangdall, that there is no higher grades awarded to any student in Social Studies by reason of being in Interact, is there?
A. Not directly.

Q. Not even indirectly, is there, Dr. Tangdall?
A. Well, it is certainly possible because one of the ways that students in Sociology, for example, can earn extra credit is participate in a variety of community involvement activities. One of those community involvement activities could be a

similar or the same activity that kids are involved with at Interact. For example, the Dore Bingel (phonetic) Recreation Center for Adult Citizens et cetera. So if a student would participate in both, they certainly could get extra credit in Sociology as well as be in Interact, but it is certainly not always a one-to-one match.

Q. It could be another service project that they would want to do on their own outside of Interact also, correct?
A. It could be.

* * *

[413] Q. Where in writing in the policies and procedures is there anything that directly ties any of the various clubs at Westside High School to curriculum? In other words, do you know of any document that says, "Chess Club is related to Math" or anything in the Math curriculum exhibits that we have entered that says, "Math requires Chess Club," for example?
A. No, we do not have anything that gives direct one-to-one relationship. We certainly have our mission, goals and objectives -- the mission and goals of the school system and the objectives of each course -- and those objectives of the various courses and the mission and goals, obviously we have our total curriculum in place to enhance the development of those young people by participating in that total curriculum but there is not a one-

to-one objective that says Chess Club participation is required in Mathematics, if that's what you're [414] asking.

Q. There are on a few clubs, though, correct, such as you consider Choir to be, as it is listed on Exhibit 63 -- you consider that to be an extra-curricular activity or an extra activity, and it is tied directly to the curriculum, is it not?
A. Well, again I think we covered that the other day, that Choir is listed and Band are listed on that sheet that we provide to homeroom advisors so they can properly inform or advise as to what is available to students to participate in, to get involved, you know, before and after school. But Choir and Band is a class and I'm sure that every student I know at Westside would recognize that as a class and, therefore, any extension of that class or part of the requirements of that class are to participate in the Band performances and the Choir performances.

Q. And the same is true of Orchestra, correct?
A. That is correct.

Q. And DECA is also an extension of the Distributive Education class, correct?
A. DECA is an extension of the Distributive Education class but everyone in Distributive Education does not have to participate in DECA, where everyone in Choir would have to participate in the performance of the Choir.

Q. Everyone in Math doesn't have to participate in [415] Chess Club?
A. That is correct.

Q. I want to go down the list of clubs with you, Dr. Tangdall, and I would like to just ask you to briefly tell the Court what curriculum you -- besides the missions and goals, the general missions and goals of Westside High School or District 66 that you have said all the clubs, I guess, fall under those missions and goals -- I want to know what curriculum a particular club relates to. Chess Club relates to what curriculum, sir?
A. Well, I don't think I can answer that question because we define curriculum and co-curriculum as all those activities we provide in that school that contribute to those -- the goals and mission and objectives. You know, we've gone through this many, many times, but if you're wanting me to try and make a connection between Chess Club, I certainly would indicate, and I said before, that Chess Club we hope improves the problem-solving ability of kids, the critical thinking ability of students and enhances their logical approach to solving problems, which are certainly objectives of both our Math and Science Departments.

Q. How about Subsurfers?
A. Subsurfers would be a very similar premise to begin with but I would indicate that Subsurfers is certainly one of the overall goals of our Physical Education Program. It's [416] an example of our goals of our

Physical Education Program, to develop on the part of young people a lifelong activity to enhance their leisure time activity. Those are both overriding goals of our Physical Education Department as well as part of our mission.

Q. How about National Honors Society?
A. National Honors Society is directly related to all of our courses because it is a way to honor students who have succeeded academically, who have been recognized for outstanding service to the community and also have high moral character and outstanding leadership. There are four planks in the National Honors Society.

Q. How about Welcome to Westside?
A. Welcome to Westside again is tied to our objective of our Social -- well, first of all, the overall goal of our school, to develop effective citizens for society, and Welcome to Westside is a club to enhance the commitment and contribution to their fellow students.

Q. How about Zonta?
A. Zonta would be very similar to Interact. It is related to Zon International, which is the Z Club at Westside. It is a service club with similar functions as Interact and again would be an extension of our Social Studies' goals and objectives.

Q. Do you, Dr. Tangdall, know what Zonta International [417] is?

A. I'm not terribly familiar with it except I know that it is a women's international fellowship and service club, to devote service to -- to help support service activities in whatever community they're in.

Q. How about Student Advisory Board? How is that -- what curriculum at Westside is that related to?
A. Well, again, Student Advisory Board would certain -- it's a student-governing. Some schools call it Student Council. It's in place to develop citizenship on the part of our young people and to have kids participate and appreciate the democratic process, which again is an overriding mission of our school system.

Q. Setting aside the problems that may exist in your mind as far as establishment of religion in the schools, couldn't a Bible Club meet the goals and objectives of Westside High School?
A. It's possible.

Q. It could meet good citizenship goals, build morals?
A. I would certainly think that that's possible.

[418] Q. You'd hope it would, wouldn't you?
A. I would hope that it would.

* * *

Q. Dr. Tangdall, did you know that the school was permitting adults to participate from the outside in the activity known as Subsurfers?
A. Well, I -- I know that Subsurfers is sponsored by the school, assigned a sponsor, Mr. Harley Hartison, and I know that we have contracted with -- with I think it's Underwater World in the past to teach scuba diving lessons [419] to the youngsters in that club, and I think from time to time we've had faculty members, I think other students that have -- that those lessons are available to, but the students in our club have had the opportunity to take those lessons at a considerably reduced rate. At least, that's the way it was a number of years ago.

Q. But you knew adults were permitted into the school during the same time period as the club met, right?
A. That's correct but it was my assumption that they were either teacher aides or faculty members et cetera. At least, that was the extent of knowledge that I had of that.

* * *

[420] Q. Dr. Tangdall, in your period of time as a Principal at Westside High School, did you permit outside organizations to make announcements in homeroom and the like concerning activities that might be going on in and around the school?
A. Not that I recall.

Q. Was it in fact prohibited for, let's say, Fellowship of Christian Athletes to make it known that they were having a meeting on a particular date and at a particular place?
A. Yes.

Q. That was prohibited?
A. Yes.

Q. Other organizations like Planned Parenthood or groups like that were also prohibited from making those sorts of announcements that were having meetings in and around the school?
A. Only if it was in conjunction with a class.

[421] Q. What do you mean by that, Dr. Tangdall?
A. Well, you brought up Planned Parenthood. For example, our Sociology class has a marriage unit and during that time of that marriage unit I know that the Sociology team of teachers invite Planned Parenthood in to make a presentation, and if they would announce -- make an announcement through our bulletin or the P.A. system in relationship to that and it's signed off by that Sociology teacher, then we would permit that announcement to occur.

* * *

[422] Q. I will take a look a little bit with you at the situation with approving clubs. What has your involvement in the past been,

Dr. Tangdall, in approving the formation of clubs and activities at Westside High School?
A. "In the past," do you mean when I was Principal?

Q. Correct.
A. Well, when I was Principal at Westside High School, Mr. Huston, at least the last few years, and Dr. Hoyt before that, was the Assistant Principal in charge of activities, of the total activity program, which included athletics, and many times if a student or a sponsor, a faculty member, a potential sponsor, came and requested the formation of a club, they may do that through Mr. Huston or they may do that through me or one of the other Assistant Principals, and again we would make a determination as to whether or not we were going to proceed with that club based on -- on our school, if it was in compliance with our School Board policy, if we thought that we had enough interest, if we thought we had a [423] sponsor that had the expertise and ability and the interest to be a sponsor, then we would proceed, and, again, depending upon financial considerations and a number of other factors, and that's the way a lot of times it was initiated.

Q. In your time as Principal and then since that time as Superintendent or Associate Superintendent, have you ever had an opportunity, Dr. Tangdall, to determine that a

particular club was inappropriate and thereby turned down that club's request to be formed?

A. Well, I indicated Thursday that we simply had when I was Principal a couple of cases of soccer team and we also had an instance of a softball team, but since I have been Associate Superintendent the one I have been involved with is the Christian Bible Club.

Q. The soccer and the softball team, as you mentioned last week, was because, I believe, you didn't have facilities available?

A. Well, one of the reasons was facilities and another reason was the expense; the third reason was our Metropolitan Conference did not provide -- other schools did not provide those activities, we did not have enough teams to compete with, and coaching et cetera. There were a number of factors.

Q. It wasn't because they were playing softball or soccer, was it?

A. Not at all.

* * *

[424] Q. You said you did have an opportunity then in the case of Miss Mergens to make a determination that the club should not be permitted, correct?

A. I was involved with that, yes.

Q. What did you base your determination on?

A. Well, I based the determination on that it wasn't in compliance with the School Board policy.

Q. Is that the only reason that you denied the club the right to meet?

A. Well, from the standpoint that -- that the -- the stipulation of the club, that it was going to be formed under the Equal Access Act and that we felt that -- that with our definition of -- or working definition of "curriculum" that -- that our School Board policy need not be modified, and, consequently, the request for this club did not conform to that policy.

Q. When you say "the School Board policy," you are talking about 5610, I believe it is?

A. If that's the correct number, yes.

* * *

[425] Q. And based on this particular policy you made the determination that the club was inappropriate for Westside High School?

A. Well, based on a combination of things. If you are interested in the rationale for the determination -- for not accepting the club, I can go through that.

Q. I would like that, Dr. Tangdall.

A. We certainly, as Dr. Findley testified -- we had had a meeting to at least get a (sic) understanding and to discuss the Equal Access Act and recognizing that we feel very strongly that the curriculum of all the classes and clubs and activities

and athletics that are related to the school that we think contribute to the development of young people, that it is not necessary for us to modify our School Board policy and that we could continue to operate our clubs and activities as we had in the past, and so, consequently, that's the rationale that the refusal was made.

Q. It was a combination of things then, is that fair to say? I don't want to put words in your mouth.
A. Well, it certainly -- it certainly wasn't an isolation. It certainly -- you know, the bottom line was that our School Board policy was still intact, we did not modify it, and [426] therefore, this request did not conform to that policy so we denied the required.

Q. Okay. How specifically did the request not conform to the School Board policy?
A. Well, one was that -- that it was to be a student club, student-initiated club, and that it would not have a sponsor per se but only a monitor, and also that -- that it was a Christian Bible Club which was not -- which we felt -- which I think we all concluded was separation of Church and state, a violation of that principle.

Q. You do have policies, don't you, at Westside High School that deal with the freedom of speech and freedom of expression, correct?
A. Yes, we do.

* * *

Q. You didn't see the denial as being a violation of those particular policies?
A. Not at all.

Q. Why not?
A. Well, because when we talk about freedom of relig-- freedom of speech, freedom of religion, we're certainly going to allow students to -- we're not going to inhibit their [427] discussion as to what they wish to talk about and discuss et cetera. We're just not going to put a stamp of approval on a particular -- the tenets of a particular religion or a particular political philosophy et cetera. We're going to provide -- if we provide a club, it's going to be of an umbrella nature. We're going to prevent -- or present a balanced point of view.

Q. Wasn't there a way, Dr. Tangdall, that you could have issued a disclaimer and still allowed the club to meet?
A. No, I do not believe so at all. I think that the policy is very clear that -- that we will -- there will be school clubs, that we will assign a sponsor to direct the activities et cetera, as we have gone through before, of that club and that it will not be affiliated with a particular religion.

Q. Would you deny a Philosophy Club the right to meet, Dr. Tangdall?

A. A Philosophy Club? Well, I would certainly want to know a considerable number of details about that Philosophy Club before I made a decision on it.

Q. You would have to look into the club and what they were going to be doing before you would make a determination?
A. Well, I'd have to know what the request is and [428] know considerably more background about it.

Q. You would have to look at the contents of the club and make that determination, correct?
A. Not only the content, but the intent and purpose of what they wish to do.

Q. Dr. Tangdall, there has been some discussions back and forth on earlier occasions about financial assistance that the school might receive. Do you agree that Westside High School receives federal financial assistance?
A. That's correct.

* * *

Q. Showing you Exhibit 73, I ask you to review that please for a moment.
A. (Checking exhibit).

Q. Do you recognize that?
A. Yes, I do.

[429] Q. And that's the Federal Financial Assistance receipt by District 66?
A. For the year ending August 31 of '85, that's correct.

Q. And that totaled how much?
A. $860,000.00 -- $860,932.86.

Q. And some of those funds, whether it's through services or whether it's directly or passed on to Westside High School, is that correct?
A. That's correct.

Q. Dr. Tangdall, back briefly on the request made by Miss Mergens, how did you first come to the knowledge that Miss Mergens had requested a club at Westside High School?
A. Dr. Findley informed me and I can't remember whether it was a personal conference or through a telephone call. Dr. Findley first informed me.

Q. And did you take any steps as a result of him having informed you of this request?
A. Well, we visited about it and he indicated or asked me -- I indicated to him what transpired and what he said and, as I recall, he said he told Bridget that he thought that -- that that probably would not be possible but he needed to investigate it further, and when he talked to me I indicated to him, I said, "Are you sure that Bridget wants to form a Christian Bible Club per se?" and during that conversation we talked about the Equal Access Act, and he said, [430] "Yes, it is my understanding, that she wants it under the purview of the Equal Access Act," and I said, "I know that from time to time, you know, when she was a sophomore and a junior, she visited with a number of students in the school, in the cafeteria, art lab or

wherever, you know, about the Bible," and I said, "Are you sure she just doesn't want to get together with a group of kids and visit about the Bible?" -- "No," he said, "I'm quite sure she wants the school to put their stamp of approval on a Christian Bible Club," and I said, "Well," I said, "if that's the case, I'll talk to Dr. Hansen but --" -- and I reminded him of our meeting we had early in the school year about the Equal Access Act, "and confirm with Dr. Hansen that that's still our position." I did that and got back to Dr. Findley and indicated to him that our position was that it was not in compliance with School Board policy so we would not authorize that club to be formed.

Q. Did you get directly back with Miss Mergens on that particular issue?

A. I indicated -- I think Dr. Findley told me that he indicated that he would get back to -- to Bridget Mergens, and he said, "I'm sure that she is going to want to appeal it," and I said, "Well, if that's the case, let me know and I'll be glad to visit with her."

[431] Q. The determination that was made was made then by you and Dr. Findley and Dr. Hansen without the aid of any legal counsel, is that correct?

A. Well, we certainly made the ultimate -- the final decision. I think that Dr. Hansen -- every year, at the end of the -- at the close of the State Legislature and of the United States Congress we review the various Acts and laws et cetera that might impact

the public schools, and I think that Dr. Hansen somewhere in that conversation, that some time in August we had talked about the Equal Access Act, and he I think asked for an opinion from counsel, the School District's counsel, as to what the Act really meant and he, as I recall, received a letter indicating what the Act meant and some related cases, and we visited and indicated that we felt as I said before, that everything we offered at Westside or all of those things are part of our curriculum and consequently we saw no need to request the Board to modify their policy and we directed the secondary administrators to proceed as they had with previous clubs and activities. And so it is not just one isolated incident over here, that when this came up that all of a sudden I made a -- that Dr. Findley and Dr. Hansen made a decision that wasn't preceded by a lot of careful thought and consideration.

Q. In your Affidavit that was issued as part of the Preliminary Injunction Hearing, you made a statement, I [432] believe, that "Bridget C. Mergens made a formal request to me for permission to form a student religious club or organization." Was that a request in writing or are you talking about the request that came through Dr. Findley?

A. No, it was not in writing. It was a request that I had told Dr. Findley to tell Bridget that -- that if she wished to appeal his decision, that I would be glad to visit with her, and

so I came to Westside one day and visited with her in the conference room about -- about that situation.

Q. And that's where you told her that you felt that club would violate School Board policy?

A. That's correct. As I recall, the -- the -- it was not a very long conference and I just wanted to assure Bridget, because you've got to remember that I had known Bridget quite well for two years and had a number of conferences with Bridget over a number of things, and I just wanted to assure her that it had nothing to do with -- I didn't want her to take it personally or I didn't want her to think it had anything to do with her religion but that it just did not conform to our Board policy, and I think I indicated to her that -- something to that effect.

Q. And you do remember, too, don't you, during the course of the discussion that she indicated that she wanted to meet under the purview of the Equal Access Act?

A. I'm sure that we talked about the Equal Access Act, [433] and that was my understanding, that she wanted to meet under the purview of the Equal Access Act.

Q. And you also recall that the topic of sponsorship didn't really come up during that meeting, did it?

A. I don't -- no, I don't think we even went into the details of the policy. I think Bridget accepted that and we just had a nice visit.

Q. Did you take any affirmative steps, Dr. Tangdall, to try to help Miss Mergens work this club into the Equal Access Act or did you feel the Act did not apply to Westside?

A. Well, I certainly felt that the Act did not apply to Westside.

* * *

Q. Did you believe at that point in time when she came to speak with you that the club would also not fit within the goals of the high school?

A. I -- I don't even think I gave that any thought. I don't think I went that far.

Q. Miss Mergens didn't tell you the club was going to be sponsored by any particular religious organization, did she?

[434] A. No, other than the fact that she indicated that it was a Christian Bible Club that she wanted to form.

Q. I mean she didn't tell you it was going to be sponsored by the Baptist Church --

A. No, she did not.

Q. -- or the Church of God --

A. No.

Q. -- or anything like that?

A. No.

* * *

[435] Q. You viewed her request as being a request to have a club just like the other clubs that existed at Westside High School, correct?

A. No, I didn't -- I didn't view it as forming a club just like the other clubs at all. I think there is a big distinction that we spent lots of time discussing here. All of our other clubs are clubs that we provide with school endorsement and faculty sponsorship, and that was certainly different than this particular request.

Q. You do agree, don't you, Dr. Tangdall, that a Bible Club could become curriculum-related and that it could relate possibly to English Literature, correct?
A. Certainly, particularly if it were a comparable religious study or something of that nature, then that would -- it would certainly put a -- would give it a different perspective.

Q. But even if it were just a Christian Club, it could relate, if you will, to English Literature?

A. There's certainly -- in literature, American Literature or English Literature, we study the impact of religion in that particular era that they're studying.

Q. And of the Bible itself, right?
A. The Bible, other religions, et cetera.

Q. It could relate to Sociology?
[436] A. The Bible Club?

Q. Yeah.
A. It's -- it's possible that it could.

Q. It could relate to History, couldn't it?
A. Certainly it's possible.

Q. Dr. Tangdall, I believe that one of the policies of the school is to develop within its student body good citizenship, correct, as one of the goals?
A. That is correct.

Q. The Bible Club could do that, couldn't it?
A. I certainly would hope that it could.

Q. It could also develop wholesome attitudes?
A. I would think that it could, certainly.

Q. Good human relations?
A. That's certainly possible, yes.

Q. And human -- or, pardon me, knowledge and skills, correct?
A. If it were designed properly, it could, yes.

Q. And these are all the goals that are found in Exhibit 71, Policy 5610, in the beginning paragraph, correct?
A. (Checking exhibit) That's correct.

* * *

[437] Q. Dr. Tangdall, do you believe that Westside High School is a place where controversial subjects can and should be discussed?
A. Yes, I do.

Q. So do you believe that students are able to listen to controversial subjects and, as a result of listening to them, make decisions for themselves concerning those controversial subjects and issues?
A. I believe that if they are structured with the framework of -- of class and it's a high -- it's a very structured situation, I do.

Q. But you allow controversial subjects, according to your testimony, I believe, to be freely expressed within other [438] parts of the school, too, don't you?
A. Under our program, under modular scheduling, students have a certain amount of unscheduled time. During their unscheduled time they are allowed to go to various instructional centers to get help or to study particular areas. They may go to the cafeteria and just visit, certainly, during their unscheduled time, and as long as it conforms to the -- the orderly rules of that area, what they discuss is certainly up to them individually. We certainly don't -- don't try to monitor their discussion.

Q. And it's true, to a degree, that once a club is formed that the sponsor does not do that much monitoring or limiting of the discussion that might go on in the club, correct?
A. Well, no, they don't -- I think that obviously it will depend an awful lot on the club and the meeting and the purpose and the activity. Certainly, I think Cheerleaders are practicing. What discussion they have out there I

don't think the sponsor is going to monitor that at all. I think if it's a formal National Honors Society ceremony, there is going to be a monitoring of -- of what occurs.

Q. I guess what I am getting at is sponsors aren't required to be in the clubs at all times, are they?
A. To be there at all times?

Q. Right.
[439] A. They're not required to be there at all times, that's correct.

Q. In fact, they do sometimes come and go when the clubs are going on, correct?
A. Sometimes, that's correct.

Q. It depends on how structured the club is and how much they might be needed in the club, correct?
A. That's correct.

Q. Is it fair to say that sponsors have kind of a wide range of activities within the club?
A. They have a wide range of activities but they are responsible for all of them.

Q. They are ultimately responsible for that individual club, I understand that.
A. That is correct.

Q. But as far as let's say in Drama Club, if the kids -- that has been around for a long time, there is no need to do anything with forming the club, the kids are pretty well

familiar with how the club should be run, the sponsor doesn't have to be there all the time, does he?
A. Will not be there all the time.

Q. They can, in fact, meet without the sponsor even being there, correct?
A. Well, I don't think that would be our wishes, but obviously they must.

* * *

[440] Q. And that is your Affidavit, is it not?
A. That is correct.

Q. And that was submitted, I believe, almost two years ago now, in May of 1985, correct?
A. That is correct.

Q. Number 16 of that says, I believe, that "In the event any one or more of the student clubs or organizations are determined by the Court to be non-curriculum-related and if the Court determines that Westside High School has a limited open forum under the Equal Access Act, I would recommend to the Board of Education that it consider amending the policies to discontinue such student clubs or organizations," correct?
A. That is correct.

[441] Q. Would you explain why you would do that?
A. Well, I think that it would take an awful lot of deliberation on our part. The reason why I would do it is because I think the issue here is so vital to our community because I

think it is imperative that the parents of our youngsters in District 66 of high school age, that we have control and that we administer all of the activities that occur in that school, and if it were a choice between giving that up or giving up the Chess Club, for example, I would -- right now I would indicate that I would not relinquish that authority.

* * *

Q. Couldn't you solve the problem, Dr. Tangdall, by just providing a monitor to the club and allowing it to continue to meet?
A. Not in my definition of a monitor. We would have to have a sponsor. It would have to be a school-approved club and we would have to assign a sponsor to be sure that someone is responsible for the activities et cetera that occur there so that the parents and the community understand that we have the authority over all of the total curriculum, normally referred [442] to as curriculum and co-curricular.

Q. Correct me if I am wrong. So you are saying in your Affidavit that you would in fact recommend to the Board that any clubs that were non-curriculum-related as determined by this Court be done away with?
A. I said I would recommend that it consider.

Q. Okay, that they consider doing away with any clubs that might be non-curriculum-related?

A. That would certainly be a recommendation that they might consider that I would make to them, yes.

* * *

[443] Q. Dr. Tangdall, back a few questions relative to your answer on controlling on behalf of parents what goes on in school, certainly there are controversial subjects that are discussed in the school or that are handled in the school that some parents don't agree with, right?

A. I am sure that there are subjects that are discussed in the school that some parents don't agree with. That's why we have them in class and that's why we insist that it is presented with a balanced point of view and that our faculty or school does not take an advocacy position on those issues.

* * *

[444] Q. It's really impossible, isn't it, Dr. Tangdall, to control what goes on at Westside High School as far as those controversial subjects are concerned?

A. It certainly is possible for us to insist to the staff that we present a balanced point of view and do not take an advocacy position, and we're certainly going to discuss controversial issues as appropriate in classes and that's the concern that I have and that's obviously my

job as an administrator, to insist that -- that controversial issues are handled in that manner.

Q. You do allow students, however, to handle controversial subjects and take advocacy positions in the school [445] newspaper, don't you?

A. Well, yes. The school newspaper, though, is -- is certainly another issue that is protected by a whole other set of -- of laws, and the school newspaper is within the confines of -- of not being libelous, not being slanderous, not being lewd et cetera, and they can certainly express points of view in that newspaper. That is correct. But we are certainly not in a position to censor them. I am not.

* * *

CROSS EXAMINATION

BY MR. DAUBMAN:

[446] Q. Dr. Tangdall, is National Honor Society really a club at Westside High School or is it an honor to some of the students at Westside High School?

A. It's an honor to the students at Westside High School. It's very -- set up to honor those students who have done well in the four areas I mentioned.

Q. And who makes the decision as to whether or not a [447] particular student is to be honored as being part of National Honors Society?

A. There's a faculty committee that is formed to make those decision (sic) and recommendation of the Principal.

Q. You mentioned that there are four areas that are considered by this faculty committee in determining whether a particular student is to be on National Honors Society. Can you recite those, please?
A. I hope so.

Q. Okay.
A. Scholarship, character, service and leadership.

* * *

[448] Q. Is it fair to characterize Welcome to Westside as a club?
A. We've never -- we would never. I think most all people at Westside High School would not think of Welcome to Westside as a club per se but it is certainly an activity. It's a vehicle for kids to perform a service to their fellow students.

Q. Is it fair to characterize Welcome to Westside, Dr. Tangdall, as a sign-up sheet, so to speak, for students [449] who wish to volunteer --

MR. VEITH: Your Honor, I am going to object to the form of the question as being leading. It's an adverse witness and --

MR. DAUBMAN: It's Cross Examination, Your Honor.

THE COURT: Yes. Overruled. He may answer.

Q. Is is fair to characterize Welcome to Westside as a sign-up sheet, if you will, for students who wish to volunteer to take or to show transfer students around the high school when they transfer into the high school at mid term?
A. I think that's fair. They would sign up, probably, at the Activities Day, but it's -- that's a fair assessment.

Q. And when students transfer in to Westside High School during the school year, does the faculty sponsor a faculty advisor of Welcome to Westside and then proceed to contact people who are on that sign-up sheet to ask them to take the new students around and show him the high school?
A. Yes, she does.

Q. One of the items that you mentioned in terms of your concern about the requested club, if I recall your testimony correctly, related to being responsive to the parents or the people of the School District -- the parents of the School District as to what goes on at the high school and what control the high school exercises over the curriculum and the co-curricular activities through the clubs and [450] organizations, is that correct?
A. That's correct.

Q. In your consideration of the Equal Access Act in general, did you -- or were you concerned about types of clubs and organizations that would be

allowed under the Equal Access Act beyond a Bible Study or Christian Fellowship Class?

A. Yes.

Q. Could you explain to the Court what some of those concerns were?

A. Well, as I indicated earlier, an overriding concern that we have is that we are able to administer all of the activities that occur within that school, and I think that we would be very concerned if we opened that up to -- to the young neo-Nazis or the Moonies or whomever, and I don't think that our patrons of our community would -- would tolerate that.

Q. Is that one of the reasons why the School Board policy is as it is in requiring that it be the school that initiates sponsors and is basically responsible for the operation of all of the clubs?

A. Yes, it is.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

* * *

[456] Q. I believe the Social Studies 10 objectives were discussed, Exhibit 13. I just want to reiterate with you there are no other course curriculum guidelines or objectives that you know of, are there, Dr. Tangdall, that specifically state that Chess Club is part of the Math

curriculum or Interact is part of the Social Studies or Psychology curriculum?

[457] A. No. There are no -- there are no course objectives that specifically state that those clubs are part of that curriculum.

Q. There's no direct tie-in then?

A. I didn't say that. We think there's a direct tie-in, yes.

Q. Because it meets the objectives et cetera?

A. Of the course, that's correct.

* * *

THE COURT: Dr. Tangdall, I think I have a question. I thought I made a note here. You testified that from your point of view the club sponsor, who could be faculty or administrative or perhaps other employee, must direct, coordinate and plan the activities of a club. Why -- I guess I'm not sure -- why do you view the sponsor to encompass those responsibilities?

THE WITNESS: Well, we think that it's awfully important dealing with youngsters of that age that we have a faculty sponsor who can -- who understands what the goals and objectives of the club are to help those elected officers to do those functions, to plan what their activities are going to be and, if necessary, to direct them and coordinate them and we think that that's vital if we're going to accomplish the mission and goals and objectives of the school system.

[458] THE COURT: All right. Now from your testimony two areas have been mentioned particularly as being unacceptable. One is clubs involving political philosophy and the other, religious tenets, I believe were the words that you used. Is that essentially correct?

THE WITNESS: That's essentially correct, yes.

THE COURT: And you differentiate between these subjects being treated like clubs dedicated to the carrying out of the plans and goals of the school and classroom activities, is that correct?

THE WITNESS: Would you say that again?

THE COURT: I'll see if I can.

THE WITNESS: Okay.

THE COURT: I understood you to say that you are concerned about the activities of the sponsor and the stamp of approval on particular clubs and the subject matter of particular clubs because you view them as an extension of the goals and mission of the school, right?

THE WITNESS: That's correct. That's correct.

THE COURT: But you differentiate the function of a club from the contents of classroom instruction, is that right?

THE WITNESS: Differentiate from the standpoint that the instruction in the classroom we feel, and that's why I have

indicated all of the areas that we feel that we [459] deal with the high school level that are of a controversial nature, we are going to have those exist within the structure of that class. Our clubs and activities are an extension of the broader goals of those courses in developing citizenship, developing a spirit of community service and a spirit towards fellow man but the actual classroom activity we intend and design to be a very structured event to be sure that kids are -- when I say "kids," high-school age students are getting an objective point of view of whatever the issue may be.

* * *

[460] THE COURT: -- Modern History, whatever, and there is this concern that this balance that you speak of maybe doesn't always occur in the classroom because someone may advocate a specific candidate or a specific philosophy and so if the club program is dedicated to an extension of the school mission and part of the school mission is to discuss these controversial things in class and presumably on a balanced basis, but sometimes that doesn't occur, where in your mind do you separate all of that as you attempt to do this balancing act that you must have to do every day as a school administrator?

THE WITNESS: Well, we certainly make every effort to be sure that in those Civics classes or whatever that whatever that (sic) professor's political inclination has to be is not used in his teaching situation; that that's why we tried very hard, and I think our staff

does, to present a balanced point of view. Now, that doesn't mean when, you know, they're outside of school, they're certainly entitled to whatever kind of political action they wish to take. --

THE COURT: Well, I'm not saying that that happens.

THE WITNESS: Right.

THE COURT: I'm just saying what if.

THE WITNESS: What if it happens?

THE COURT: Yes.

[461] THE WITNESS: I would visit with that particular teacher and explain, you know where we are and remind him again that we are dealing with impressionable young people of high school age and what our responsibility in the public school is to the community and hope -- and I think in the few cases that I know of that we have resolved it that way. If it went beyond that point, why, then I'm not sure what I would do. I suppose I would maybe consult a legal opinion et cetera, but in the past we have been able to resolve them through conferring with the individual about it.

THE COURT: But you view that as somehow different than the teacher wearing the black arm band, which is a public statement perhaps of one kind or another against a certain armed conflict or a certain social situation, in the classroom.

THE WITNESS: Yes. I again would visit with him in the situations if they were expressing through a badge or an arm band or whatever, I would visit with him individually and again remind them of our obligation of the public school. Now, if they wanted to wear that arm band, you know, outside the school hours et cetera -- and that's the way that we would attempt to approach that.

THE COURT: But the courts have fairly consistently found some First Amendment implications in some of those activities --

THE WITNESS: I understand.

[462] THE COURT -- which is the same Amendment that is, at least in part, involved here.

THE WITNESS: But certainly with students, you know, I wouldn't object to that at all. If a faculty member, you know, we would visit about that, confer with him.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

Q. Dr. Tangdall, as far as the activities and clubs are concerned and how they are directed, formed et cetera, is there anything in writing that explains to a prospective supervisor -- or sponsor, rather, what he is supposed to do, how he is supposed to do it, how he is supposed

to put this club together, how he is supposed to maintain the club in whatever form it's going to end up?

A. No, other than -- other than our Board policy and other than the fact that presently Mr. Huston would visit with them and review previous constitutions and bylaws that that club may have drawn up. But -- and the fact that he would visit with them about their responsibility of -- of, you know, as I said before, planning, directing and coordinating the activities. But there is nothing specifically 1, 2, 3, you know, "Here is what you do; get at it."

[463] Q. I guess I'm asking, and I think you've answered it, but outside of 5610, the Exhibit 71, the School Board policy, there is no procedural methodology other than word of mouth from Mr. Huston as to how the club is to be formed, directed et cetera?

A. Other than previous constitution or bylaws that may have existed in that club or activity.

Q. And if that club did not exist before --

A. That's correct.

Q. -- there is still not a procedure that would apply for the formation --

A. Not a written procedure, that is correct.

* * *

Q. Dr. Tangdall, who makes the determination as to what is an objective view on a controversial subject?

A. Who makes that determination? That professional [464] staff member and other people, supervisory, that may evaluate them, which may be a team leader, a department head or an administrator, but generally it would be up to the professional opinion of that staff member. If there was a concern, then other people would intervene.

* * *

RECROSS EXAMINATION

BY MR. DAUBMAN:

* * *

[465] Q. I just want to ask you a couple of follow-up questions regarding the issues touched upon by His Honor. Do you have an objection to a Westside High School student club whose function would be religions of the world or comparative religions?

* * *

A. No. I do not -- I do not have an objection to that. I would certainly want to again review what the -- the purposes and -- and who the sponsor is going to be because I would want to be sure that that particular activity would be fairly well structured, but I certainly would not have an objection if you're talking about religions of the world or comparative religions, no.

Q. Would you insist that that club activity be structured so that there would be an even balance or treatment --

A. Yes, I would.

Q. -- of the subject matter just as there would be in [466] a classroom setting?

A. Yes.

* * *

THE COURT: Dr. Tangdall, your last answers are of some interest to me. If government, for instance, as a structure, which are taught through Political Science or whatever, has in time since the Constitution was adopted taken on responsibilities that overlapped with, for instance, religious institutions, how do you then avoid at least a limited open forum on these subjects when you teach or permit or advocate, if I understand your answer, those subjects and comparative religions and things like that as Mr. Daubman has raised with you?

THE WITNESS: Well, our position --

THE COURT: Where is the bright line that we follow here in these kinds of things or is there a bright line?

THE WITNESS: I don't believe there is a bright line, probably.

THE COURT: And isn't that the problem we have?

THE WITNESS: It may very well be the problem. We -- we just -- obviously, it's a decision that we would have to make and

have faith that -- if it's religions of the world or political affairs forum that we use our best judgment to be sure that -- that it is structured and the kids understand that there are -- how many facets, different ideologies [467] are presented, that we are presenting them at the best balance we can present, but we're certainly -- that's why we want it to be a school-sponsored club and we are certainly going to make that effort to do that, but we certainly don't want young people to go out of there feeling in any way that this is -- that we are in an advocacy role for a particular ideology, and it's not a bright line, I don't believe.

* * *

THE COURT: I am simply attempting to explore this whole subject and I think with the background here that you are obviously an expert in this area and have given some thought to these problems, based upon your testimony. But to go back to your comparative religions answer that Mr. Daubman asked you about, there's, at least in some of the religions that we are familiar with in this community, a group of mandates called the Ten Commandments. Certainly if I understand the verbiage of that part of those religions, there's certainly some things contained there that may overlap with some of your Social Studies teaching --

THE WITNESS: That's true.

THE COURT: And something like "Honor your father and your mother," and I suspect that that is probably not alien [468] to the mission of Westside High School.

THE WITNESS: No, it isn't.

THE COURT: So that's the -- and if the clubs are part of the means by which Westside High School carries on its mission, as are the classroom things, you have testified that you would recommend the elimination of anything if you had to delve into the area of these kinds of clubs at all, and my question I guess then is have you considered in that regard which clubs there would be and which clubs would have to be done away with, just to follow that philosophy?

THE WITNESS: Well, Your Honor, no, I haven't given that any serious thought at all. Obviously, I hoped that we wouldn't come to that, you know, point, but I guess that the reason for my statement is that I certainly think that it's more important to the people of our community that we have school clubs that are endorsed by the school and we assign a sponsor to make every effort to maintain that balance we're talking about, that that may be more important per se than a Chess Club is to us. Now, how far you extend that, I haven't thought about that.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

[469] Q. Dr. Tangdall, if I understand your testimony right, in order to make a determination, whether it's in the curriculum or in the case of clubs, as to whether it's permitted at the school, someone has to look at

the content of what is going to occur in that club and make a decision, right?

A. That would certainly be a factor, that is correct.

Q. I mean in the case of the Mergens' situation, you looked at what the content of the club was going to be, right?

A. Well, in the case of the Mergens' situation, that certainly being a religion club was a factor, but it was also a factor that it was under the Equal Access -- that she wanted the club under the Equal Access Act where we would not be allowed to appoint a sponsor and it would not be under our jurisdiction. Like I said before, there are a lot of factors but that is certainly a factor.

Q. One of the factors was you had to look at the content of the club to know that it was a Christian Club?

A. That it was a Christian Bible Study Club.

Q. Because it limited it to a Christian Club, that was one of the factors that was used in denying the club, right?

A. That was a factor, yes.

* * *

[470] **KENNETH K. HANSEN, Ph.D.**, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[472] Q. And what is your responsibility as far as the clubs and organizations that meet at different schools?

A. My responsibility is ultimately I am responsible for what happens in the high school whether it has to do with the curriculum or the clubs. The responsibilities are delegated to the Principal of the high school for the operation of the school and of the clubs and activities at the school.

Q. And you are ultimately responsible for the clubs and activities at Westside High School, as well?

A. Yes.

* * *

[473] Q. Dr. Hansen, you have before you among the exhibits [474] on the stand an exhibit marked 71.

A. (Checking exhibits.)

Q. Would you take a moment to review that and let me know when you have finished?

A. (Checking exhibit.)

Q. Do you recognize that policy, Dr. Hansen?

A. Yes.

Q. Is that the policy that you just spoke about which governs the initiation of student clubs and organizations?

A. Yes.

Q. If you will notice, in the second paragraph it says that "The Superintendent shall establish operational guidelines for clubs and organizations which shall function for the welfare and the best interests of the students and the school." Have you had the opportunity to propose or promulgate those types of regulations?

A. No, we've not. Not formally. Not in written form.

Q. How long has this policy been in effect at District 66?

A. I can't tell you. I think this particular policy was written in about 1973 but these have been the guidelines prior to that, as well.

Q. And you have been familiar with this policy since your term as Superintendent?

A. Yes.

[475] Q. Are there any other guidelines that are used by the Principal or any other member of Westside High School in dealing with the formation of clubs and organizations?

A. There are certain guidelines which would follow, such as regulations for school trips, sponsorship of trips, guidelines that school-sponsored clubs shall be sponsored by a certificated staff member and that kind of thing.

Q. But am I correct in understanding that there are no written guidelines that would tell Dr. Findley, in this case, how to investigate a request for a student club?
A. That's correct.

Q. How is it passed on? Just word of mouth?
A. It's been passed on by precedent and tradition and custom, is the way we've operated since I've been with the District.

Q. What has been the custom since you have been in the District?
A. The custom of the District has been to encourage school clubs and activities that will be helpful in the development of the student body in terms of helping their growth or social interaction, their service commitments and so forth.

Q. Dr. Hansen, to your knowledge has Westside High School ever permitted a political club, such as Young Republicans, to meet?
[476] A. Not as -- not specifically as Young Republicans.

Q. But they do have a Political Forum Club, do they not?
A. Yes, they had a club called Political Affairs Forum.

Q. And as a part of that forum, didn't they allow Young Republicans or Young Democrats to attend school activities?
A. Under the umbrella --

MR. DAUBMAN: Your Honor, I will object to lack of foundation as to when this club activity talks about, what time period we are talking about.

THE COURT: All right. Let's lay some foundation for the time period and so forth.

Q. Dr. Hansen, when were these clubs allowed to meet?
A. To my knowledge, the last time they met was when I was the Principal of the high school. Since then I don't recall that it has been recently. I don't believe they have recently.

Q. So you were Principal at the time?
A. When I was Principal, they had a Political Affairs Forum.

Q. Were you involved in the decision to allow the Political Affairs Forum?
A. Yes.

* * *

[482] A. We agreed that the class -- that the Bible Study activity, club, should not be allowed to meet.

Q. What was your reason for forming such a belief?
A. Really we had two reasons. One wsa we felt that the -- it was in violation of our Board policy which would require that we have a sponsor present at the -- to be present at any meetings of the organization. That would be one thing. The second thing was we were concerned about

whether or not the issue of separation of church and state was a factor here.

* * *

[484] Q. Previous to that particular Board meeting did you ever have an opportunity to look at the Equal Access Act and study it in any way?
A. Yes.

Q. When was that?
A. In the summer -- the fall, I guess, of 1984.

Q. Where did you get that opportunity?
A. I received numerous pub-- I received numerous publications that dealt with the issue to some degree, professional publications, Secondary School Principals Bulletin, The School Administrators Bulletin. The educational press was full of the -- you know, the issue of the equal access amendment at that time, as well as the popular press.

Q. Did you have a meeting of school administrators to discuss the Equal Access Act?
A. Yes. We discussed it at an administrative meeting.

Q. Do you recall who presented the issue and who presented the arguments in favor or against equal access at that meeting?
A. I think I did.
[485] Q. You personally did?
A. Uh-huh.

Q. So you presented what? Your interpretation of what the Equal Access Act was, is that correct?
A. Yes, and our Board policy, how it applied.

* * *

[486] Q. Mr. Hansen, you recall when we took your deposition at the office of your attorney?
A. Yes.

Q. And that was on the 4th day of October, 1985, isn't that correct?
A. I guess.

[487] Q. Was the following question asked and was the following answer given:

"Question: Why do you believe that it would not be appropriate?

Answer: I felt that it would be in violation of our historic policy or historic procedure not to have church-affiliated organizations meet in the school. I also felt that perhaps that was not only unconstitutional but I felt that it was inappropriate for us to have a Bible Study Club." --

Was that question asked and was that answer given?
A. Yes.

Q. And I would like to take those one at a time. You said that it was in violation of the historical procedure. What did you mean by that?

A. Well, historically in our School District we have tried to adhere to a policy of separate of church and state and tried to keep sectarianism out of the school.

Q. Have you ever heard of High Y?
A. Yes.

Q. What is High Y?
A. It was a -- there was a High Y Club at Westside High School.

Q. And when was that?
A. I believe back in the '50's.

[488] Q. What is your understanding of what High Y does?

MR. DAUBMAN: Your Honor, I am going to make the same objection as I did before as to what the forum was like in the '50's.

THE COURT: Overruled. He may answer.

Q. Isn't it a fact that High Y is associated with the YMCA?
A. Yes.

Q. And that the YMCA stands for Young Men's Christian Association?
A. Yes.

Q. But yet you testified that you had a policy, a historical policy, of keeping religion of Christianity, as it were, out of the schools, is that correct?
A. Correct.

Q. Did you allow High Y to meet at Westside?

A. We did at that time but then it was later not permitted to meet as a club because of affiliation with -- or presumed affiliation with being a Young Men's Christian Association and requiring a prayer and so on at the meetings.

Q. Do you recall approximately how long that was allowed to meet?
A. I don't recall. I know it met in 19 -- the late '50's.

* * *

[489] Q. You testified that you were also concerned that Bridget's request not be honored because it was a religiously affiliated club, is that correct?
A. That's correct.

Q. Why did you feel that that was a violation of school policy?
A. Because I thought it was a recommendation or a recognition or an endorsement of a specific -- of a particular religious group.

* * *

Q. I would like to refer you back to Exhibit 71. You said that you felt that it violated the school policy. Would you pont to the paragraph that you felt that Bridget's request violated, under school policy?
A. I'd say -- this is Paragraph 3.

Q. Would you read that for me, please?
A. "Such clubs shall not be sponsored by any political or religious organization or by any organization

which denies membership in the basis of race, color, creed, sex or political belief."

Q. Did Miss Mergens ever indicate to you that the request -- strike that. Did Miss Mergens ever indicate to you [490] that the club was sponsored by an outside organization?
A. I did not talk to Miss Mergens.

Q. Did Dr. Findley or Dr. Tangdall at all indicate to you that she had requested that a club meet and that that club be sponsored by an outside organization?
A. No.

Q. Did they indicate to you at all that that club would deny membership on a basis of race?
A. No.

Q. Color?
A. Not that I know of.

Q. Creed?
A. Not that I know of.

Q. Sex or political belief?
A. No.

Q. Dr. Hansen, what portion of School Policy 5610, Exhibit 71, did you feel that Bridget's request violated?
A. I would say this is not the only policy we have relating to separation of church and state. I think we have other policies that indicate that we don't advocate or support any particular religious group.

[491] Q. And what part of Exhibit 59 did you feel was being violated by Miss Mergens' request?
A. 6180.

Q. And what part of the policy?
A. Section -- or Paragraph 2.

Q. Would you read that paragraph for me, please?
A. "No teaching within the school shall be sectarian in nature. If any school program is or instruction is in any way imposing upon a student's religious beliefs, such a student may be excused from participation."

Q. Now, when Dr. Tangdall and Dr. Findley talked to you about the request, did they at any time indicate that Miss Mergens had requested that religion be taught within the [492] school?
A. No, except that Bible Study would be a form of teaching about religion in the school.

Q. Did they indicate to you that this was a voluntary student group?
A. Yes.

Q. And that it had requested permission to meet on the same basis as all the other clubs at Westside?
A. Yes.

Q. Did they indicate to you in any way that they felt Miss Mergens would be imposing upon a student's religious beliefs?
A. No.

Q. Did they indicate in any way that they felt that Miss Mergens would require attendance in some way at the religious club?
A. No.

Q. So you are testifying -- and I want to get this straight and I don't want to put words in your mouth -- but you are testifying that it was your interpretation of this policy?
A. Yes.

* * *

[495] Q. Had you ever before in any of your positions in District 66 or as a Principal denied the right for a club to meet?
A. I don't recall as a Principal. I hadn't as a Superintendent.

Q. You had not as a Superintendent?
A. No.

Q. This was the first one that you recommended be not allowed to meet, is that correct?
A. This is the first one that ever came before the Board.

* * *

[496] Q. Dr. Hansen, have you ever personally sponsored a club?
A. Yes, I believe I have.

Q. Was it at Westside High School?
A. Uh-huh.

Q. And what position did you hold at the time you sponsored the club?
A. I was Principal. I believe I was a sponsor for the Student Council for years.

Q. What types of activities did the Student Council engage in?
A. Oh, I guess the usual kinds of activities, supervising class elections, fund-raising, and involving activities for the general good of the school, a liaison between the students and faculty.

[497] Q. Was that particular Club related to any class that was offered at that time?
A. It was not part of any class.

Q. Did the students who attended that club receive any credit or grade as a result of their attendance?
A. No.

Q. Was it a voluntary club?
A. Yes.

Q. What kind of topics were discussed during club meetings in that club?
A. I suppose everything from dances to student conduct. I don't -- I really don't recall.

Q. Were topics such as the involvement of different political parties or were politics discussed?
A. No.

Q. Or any social issues of the time?
A. I don't believe so. I believe mainly issues having to do with the government of the school, internally.

Q. You kept a pretty tight rein then on the discussions in the club?
A. Generally. In those days, we still could.

Q. So it was your responsibility -- did you feel it was your responsibility to make sure that conversations were in keeping with Board policy at that time?
A. I don't recall that I was concerned about Board policy [498] at that time.

* * *

Q. Do you know whether any outside speakers are ever brought in to any student clubs that currently meet at Westside High School?
[499] A. Yes.

Q. What clubs are those?
A. Future Business Leaders of America are one I know.

Q. And what kind of outside speakers are brought in for that club?
A. Businessmen who teach about business and give a perspective to the students from the business community to relate to their school work and activities.

* * *

[501] **RONALD F. HUSTON**, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

* * *

[502] Q. And that is as an Assistant Principal, is taht correct?
A. That's correct.

Q. Basically what are your duties at Westside High School as an Assistant Principal?
A. Major portion of my time is spent with the operation and direction and financing, so forth, of the Athletic and Activity Program.

Q. As the Activities -- you are the Activities Director, is that correct?
A. Yes.

Q. Does that include what are known as student activities that appear, I believe, on Exhibit 63 that you should have in front of you?
A. Yes.

Q. Does that include other activities of the school, too?
A. It could.

Q. What sort of other activities could that include?
A. The -- well, in terms of student activities?

Q. Correct.
A. No, I think this would encompass the majority of them.

Q. What do your duties entail as the Activities Director? What do you do in reference to these student activities?
A. Well, I help with the direction and organization. [503] Let's split that -- let's split that down, if we can, if that would help both of us maybe.

Q. Sure.
A. The athletic portion -- we have 19 sports that I administer in terms of scheduling and financing and directing coaches in terms of those activities. That's basically that aspect of the program.

The rest of the activities, similar kinds of responsibilities with them but obviously a different direction or approach with them, depending upon what the activity would be.

Q. Well, let's take the activity of Interact.
A. Okay.

Q. What's your relationship to Interact?
A. Well, I'm -- I'm the Assistant Principal responsible for that activity. If we were in need of a sponsor, I would get involved with -- with helping in the selection of that. I did that at the point in time we needed the current sponsor, to help develop the format for that sponsor and those youngsters who choose to be a part of it, to make some decisions about what directions they may go in terms of that activity, but also give the sponsor and the youngsters who are chosen as

the major force in the club, usually the president and vice-president, the latitude to make some of their own decisions. That's why we have student activities, I think, is to allow [504] students to make decisions under the guidance of -- of adult sponsorship.

Q. Some of the sponsors at Westside High School are paid and some of them are unpaid, is that correct?
A. Yeah, that's a generalization. Let me piggyback on so that we get a better picture of it. Most all sponsors who actually have an active organization that they are sponsoring would get some type of remuneration. There have been times when clubs didn't fly even though we had advertized they were a part of what we were doing. If we didn't have enough students there, we had a sponsor available, but it didn't work out for one reason or another, they would reject getting paid for it. So does that help you?

Q. Sure. When you say "getting paid," there are some that are paid out of an Activity Program?
A. Sure.

Q. Correct? Or an Activities fund?
A. There's a fund through the District Office that -- that in conjunction with the Associate Superintendent in charge of Personnel and I would use that fund to help remunerate sponsors. Some sponsors are paid through the actual pay process for their total salary.

* * *

[505] Q. You certainly wouldn't turn down somebody if they said they didn't want to be paid, right?
A. I -- that sounds -- yeah, that's a fair question, I guess, although I really think that if they're doing their job, that they probably should accept remuneration. I have in [506] the past asked them to take salary when they have chosen not to.

* * *

[507] Q. Other procedures?
A. Yeah. If there is somebody who wants to start an organization or club, is that what you're asking?

Q. Right.
A. Typically a student, more often than a sponsor, would come and ask if they could start Blank Club or organization or activity, and again that's a matter of semantics, I think, as to what you view the question. I would typically ask them, you know, "What do you -- do you have other youngsters that are interested? Do you have anybody in mind to sponsor it?" That's not always easy to find. "What are your goals and objectives?" and they may not know that initially. That's not uncommon and expected. But then from there, I would expect them, as a non-written policy initially, to generate something in writing, indicating what their goals and objectives for that organization would be, what they think they can accomplish, and I would probably sit

down and meet then with the potential sponsor and the potential advocate for that particular organization and see whether or not it fits under our -- our guidelines and our Board policy.

If I would have questions about that, I would probably seek other help in making that decision. Sometimes that's not necessary. It becomes obvious, I think, when it's asked. At other times it's not quite so obvious. So that would be the procedure.

[508] Q. You said, "guidelines and our Board policies."
A. Uh-huh.

Q. What policy are you talking about? 5610?
A. I should have that memorized by now, shouldn't I? (Checking exhibits) Yes.

* * *

[509] Q. Are there any guidelines that exist that you operate under that tell how a club should be formed?
A. I think I just explained that.

Q. That has been passed on to you by word of mouth, correct?
A. Well, yeah, I think I explained to you what I do when somebody comes and asks for the creation of a club.

Q. I understand that, Mr. Huston, but I am saying that procedure is not written down, is it?
A. Uh, no, it isn't.

Q. It is something that over the years has developed through the club system, right?
A. That's true.

* * *

[511] Q. For example, have you permitted the FCA, the Fellowship of Christian Athletes, to come in and use the facilities?
A. There have been youngsters who have been members of FCA that have come in when our gymnasium has been open and have used it at the same time others were using it.

Q. You have allowed the Boy Scouts to come in and use the facilities, too?
A. Yes.

Q. As a matter of fact, they had a regular swimming class or at least they used it for swimming on a regular basis, weekly basis, for a while, didn't they?
A. A number of years ago.

Q. Did they have a sponsor?
A. Did they? Yes.

* * *

[514] Q. Mr. Huston, it is true, isn't it, in the majority of the cases when somebody wants to form a club they come to you or they refer to you, right?
A. In most cases, that's true.

Q. That is the proper procedure, right?
A. It's a procedure.

Q. Okay. And in this particular instance, that didn't take place, did it?
A. No, it didn't.

[515] Q. In fact, Dr. Findley, when he talked to you, indicated to you pretty much what his decision was going to be, right?
A. He indicated that he was going to ask some people and base, I think, his final decision or the School District's decision on -- on that basis. And again I -- you know, I would concur with that since -- and if I had a request for a club that in my opinion was contrary to Board policy, I obviously, because of my responsibility to the School District, would need to confer with others. Dr. Findley is the Principal of the high school. He ultimately has a decision as to what happens at Westside High School.

Q. We're mixing words here a little bit. I want to know what you did, not what you would have done, okay? You said you would have. My question to you is did you have any input at all into the decision-making process denied this club?
A. No, not --

Q. You were bypassed?
A. Well, I agree we're mixing words, I'm not sure who's mixing them. I was alerted to the fact that it was -- there was a process that was being followed. Whether or not I was

involved initially with the requiest or being kept abreast of what was occurring, again we have to take a look at the time frames. So I think I am responding as best I can to that. I'm not trying to skirt the issue, but I think I'm being as [516] forward with you as I can about that.

Q. Do you recall again during the deposition testifying that you did not give any input into the decision-making process?
A. I understand that I was not involved when he talked with -- with -- with Dr. Tangdall or Dr. Hansen. I was not involved with that.

* * *

[517] Q. So it is your impression that all of the clubs at Westside High School are curriculum-related, is that it?
A. They are, yes, sir.

Q. And what do you base that on?
A. Our curriculum guidelines, the guidelines of our activities, and the relationship between the two through our goals and objectives for both our academics and our -- and our activity programs, co-curricular programs.

Q. But beyond those goals and objectives there is no tie-in, for example, with Sociology or Psychology with interact, [518] is there?
A. What do you mean by "tie-in"?

Q. Beyond the general goals and objectives, you don't know of any requirement of Sociology or Psychology or Social Studies that one be in Interact?
A. No, they don't have to be in Interact or in Sociology to be in the other.

Q. They really don't have to be in any club, do they?
A. No.

Q. I mean there is no requirement that a student participate in any club at all at Westside High School, correct?
A. That's true.

Q. They're all volunteer.
A. Yes.

Q. In fact, you have students that don't participate in any club?
A. That's correct.

Q. Dr. Huston, the club system at Westside High School is based to a large degree on the interest of the students, correct?
A. Yes.

Q. There have been clubs over the years, for example what was it, the W Club or whatever that you sponsored that died for lack of interest, right?
[519] A. That's true.

Q. And over the years that you have been the Assistant Principal and Director of Activities there have been clubs that have come and gone?
A. That's true.

Q. And the primary reason for that is based on student interest, right?
A. Primary.

Q. And you say that a Christian Club, you would not have approved a Christian Club as you understand Miss Mergens' request, based on the fact that it was one particular religion or denomination, is that correct?
A. Yes, I think it -- the request, I wouldn't grant it if it were solely my decision based on our Board policy that denies that to be formed.

Q. Does the Board policy, in your opinion, also cover the advertising and dissemination of, if you will, material that goes along with one particular denomination or belief?
A. I'm not sure to what you are referring.

Q. For example, would it be your opinion that Board policy would prohibit the school from posting posters concerning one particular religious function?
A. I think that -- that it would prohibit that. Again, there's really a fine line there. I think we, you know, would have to go beyond just posting something but I, typically, [520] would not -- not permit that because I -- it doesn't cover all the bases, yeah.

Q. Do you recall just recently, Dr. Huston, allowing Miss Lisa Healy to post a poster for an evangelist by the name of Rich Wilderson within the school --
A. Yeah.

Q. -- advertising his presence at the local church?
A. Yeah, I remember that. I signed off on that. It wasn't in conflict with anything else we had in terms of going on in -- in school and it wasn't denominational, at least from what I could indicate.

Q. You knew it was being held at a Christian church?
A. Yes.

Q. And you knew he was a Christian evangelist?
A. I don't recall the word "Christian evangelist" being indicated in the flyer. It may have been.

Q. But you did allow her to post that in the school, right?
A. That, I did.

Q. Dr. Huston, as part of your work as an administrator and as head of the activities, do you have an opportunity to visit the various clubs and organizations on different occasions?
A. Yes.

Q. Do you observe what goes on in these clubs?
[521] A. Yes.

Q. Most of the clubs are interest clubs that deal in whatever they are entitled., For example, Chess Club deals in chess, right?
A. Yes.

Q. And I believe I asked you this in the deposition, just because the school has a Chess Club but not a Checkers Club is not an indication to you that the school favors chess over checkers, is it?
A. I think I kind of laughed when you asked that question.

Q. It is not, though, is it?
A. No, it isn't.

Q. And you don't think the students would perceive that, do you, as favoritism towards chess over checkers?
A. No, nor have we had anybody ask for a Checkers Club.

Q. Knowing what you know about the clubs and organizations that exist at Westside High School, is it your opinion that those clubs would develop good citizenship?
A. Yes, I believe that.

Q. Wholesome attitudes?
A. Yes.

Q. Good human relations?
A. Yes.

Q. Probably would promote knowledge and skill, too, wouldn't it?
A. I would think so.

Q. Okay. Bible Club could do that, too, couldn't it?
A. Yes, it could.

Q. Have you ever had anybody approach you, Dr. Huston, to play a -- to form a games club that might play the game known as Dungeons and Dragons?
A. Yes.

Q. And what was the response to that request?
A. I procrastinated the decision immediately about it, thought about it, talked about it with others, and -- and formally indicated to the individual that requested it that based on the sensitivity of that whole thing at that time, which was -- and the time frame I am not sure of, three or four years ago perhaps, with the negative kinds of commentary that was out in the newspaper et cetera and some of the things that had happened to youngsters playing it, it didn't seem appropriate, so it was not permitted.

Q. Was that because you told them, "No," or because you procrastinated to the point where they didn't really push it?
A. I told them, "No."

Q. On visiting various clubs and all, have you ever had the opportunity to visit the club known as Interact?
A. Yes.

Q. And you know that is related to the Rotary Club [523] International?
A. They -- yes, they underwrite that club, uh-huh.

Q. When you say "underwrite," what do you mean by that?

A. Interact -- Rotary indicates that they support Interact.

Q. Do they financially support it?
A. No, sir. They may some places. Certainly not in our building.

Q. I beg your pardon.
A. They don't in our building.

Q. Okay. Do they encourage students to attend Rotary Club meetings?
A. No.

Q. Have you ever known students attending Rotary Club meetings --
A. Yes.

Q. -- as a result of Interact?
A. As a result of being asked to attend, yes.

Q. And they are asked by Rotary Club members, right?
A. Yes.

Q. And on occasion Rotary Club members come into the club and discuss Rotary, correct?
A. They may. I haven't seen them very often, but they -- that has been requested.

Q. I am going to go over a few clubs with you briefly. [524] There is no requirement in any of the curriculum that you know of for someone to be a member of Subsurfers, is there?
A. No.

Q. And you don't get a grade in P.E. for being in Subsurfers, do you?
A. No.

Q. Does the same hold true for Welcome to Westside Club? There is no curriculum there that it is directly tied to, is there?

A. No, it's not an extension of any single course offering.

Q. And you don't get a grade or extra credit for being in Welcome to Westside, do you?
A. No.

Q. The same is true of Zonta?
A. That's true.

Q. Student Advisory Board?
A. That's true.

Q. And Student Forum?
A. That's right.

Q. Mr. Huston, do you have Exhibit 56 in front of you?
A. Well, let me search around.

Q. It would be a single page.
A. Fifty-six?

Q. Correct. It's a single page with a list of club [525] names and amounts.
A. (Checking exhibits) No, I don't.

* * *

[526] Q. And in those particular instances, students that are in the Bank class are required to participate in the Bank or Choir activity, correct?
A. On most instances -- in most cases, that's true. There are some exceptions to that.

Q. Okay. But in most cases that needs to be done in [527] order to get a grade in the class, correct.
A. That's built in. Students understand that that's built into the curriculum. We talked about that in the Student Handbook. We talk about that in the Student Activity Listing.

Q. As being an extension of a class?
A. So that they understand that there is more time to be spent than just time during the regular school day. That's why we express it in a couple of different places.

Q. Various clubs at Westside High School do on various occasions have outside speakers come in, don't they?
A. Yes.

Q. And you attend those clubs when the outside speaker comes in?
A. Sometimes.

Q. Do you all the time?
A. No.

Q. Do you insure when you do attend that both sides of a particular issue might be discussed if an issue is controversial?
A. Typically, sponsors if they are going to have someone come in would probably visit with me about that if they felt that was a concern or if I thought that it might be a concern, so it's -- it's talked about perhaps before the fact rather than after the individual would already be there.

[528] Q. If it's controversial?
A. Yes.

Q. Mr. Huston, do you believe that students at Westside High School are mature enough to handle controversial issues such as abortion, sexual preference and the like?
A. As long as it's monitored appropriately and -- and -- and all sides of issues are -- are presented, I think so. Again, when you group all students together, it makes it difficult to answer that question.

Q. It does occur in the classroom that those sorts of subjects are discussed pretty freely, right?
A. Yes.

Q. And you don't know what really occurs in the different clubs because you don't attend all of them, right?
A. (No response.)

Q. In other words, that type of a discussion could happen in a club?
A. I would not know if I was not in attendance what occurred that particular day, that's true.

Q. In your opinion, Dr. Huston -- a few final questions here -- do you believe that a student is permitted to freely express at Westside High School his or her religious beliefs or affiliations?
A. Do they have an oportunity (sic) to do that? Inside class or outside class? I'm not -- I'm not --

[529] Q. In the school in general?
A. In school I think they have opportunities to do that, yes.

Q. Do you believe they have the right and freedom to pray before their meals in the cafeteria, for example?
A. I think so if -- again, it is all tied to whether or not it is disruptive or whatever, if it creates a scene, but individual kinds of prayer prior to a meal, I'm sure it may happen and I may not be aware of that.

Q. You would not have any objection to that?
A. No, sir.

Q. How about a group of youngsters gathering in the lunchroom on a regular basis to maybe share their faith with one another?
A. That might happen now and I would not be opposed to that, again, with the same directive of -- you know, if it is not disruptive, if it is not causing a turmoil or a problem for anyone.

Q. As long as it is not disruptive?
A. Yes.

Q. How about if a group were to meet in the commons area during a free period and gather together and sit around in a circle and freely discuss religious topics, and maybe even have a Bible out and have somebody there, you know, sharing something from the Bible. Would you think that was [530] permitted at Westside High School?

A. The area called the commons doesn't exist any more so can I move that to the cafeteria --

Q. Sure.
A. -- because that has kind of taken on the same tone and environment?

Q. Sure.
A. And I think, you know, I answered that in the deposition. I think we would need to take a look at that. I think we would -- this was during the school day, it's not discussion where everybody could be involved with it, it would depend on the setting and the whole situation. I just -- it's difficult for me to say "Yes" or "No" to that because I don't think that's a "Yes" or "No" question. It depends on the situation. I don't know what Bible you are talking about, though that should not make any difference.

Q. Do you recall in the deposition that I asked you the question, I said:

"Question: The same situation, if they were to meet in the commons area during a free period and gathered together and sit around in a circle and freely discuss religious topics, maybe even have a Bible out and have somebody there, you know, sharing something from the Bible?"

and your answer was:

"Answer: I would probably recommend to the Principal [531] that we wouldn't permit it. He would have to make a decision as to whether or not we would.

Question: And what grounds would you recommend to the Principal that he not permit it?

Answer: I don't think it's probably appropriate for us as public school, non-sectarian, to permit that." --

Do you remember that question and answer?

A. Yes, I do.

* * *

CROSS EXAMINATION

BY MR. DAUBMAN:

* * *

[532] Q. As part of your duties as head of the activities and so forth of Westside High School, do you undertake an ongoing monitoring and supervision of the clubs and their activities?

A. Yes.

Q. Does that, in fact, vary from club to club?

A. Yes.

Q. Could you describe for the Court generally the monitoring activities that you undertake in regard to the clubs?

A. Sure. And, again, some require or ask for or by the nature of the club, I would be more involved with it than others and more involved with the sponsor than others, but typically in all cases where we have an assigned certified staff person or classified

staff person involved with the supervision or sponsorship of that, we would talk about that. We would talk about what they thought their goals and objectives would be for that particular activity. They would talk to me about the student leadership that's involved with that, for example, if they have a president and vice president and treasurer, whatever, and what they have established as goals, based on the general content of that particular activity as it has grown through the years, and during the year then we would formally talk perhaps or informally talk for sure, depending again on what the questions may be or what [533] the concerns may be or my position wondering what was occurring et cetera. So there's a -- there's a lot of room there for -- for me to be involved, but regardless of what it is, I get involved with it to some degree.

Q. And those are part of your responsibilities in your administrative position at the high school?

A. Yes.

Q. You also testified in response to Mr. Veith's questions that some kids who happened to be members of the Fellowship of Christian Athletes did come up and use the gymnasium, is that correct?

A. Yes.

Q. When did that occur, if you recall, how long ago?

A. Well, at least two winters ago. It was during the winter season. They were looking for a place to -- to just play basketball, I think.

Q. On occasion does Westside High School open up its gym for general use by the community?
A. Yes.

Q. And did that occur after school hours?
A. Yes, it was not on a school day.

Q. Was it on a weekend?
A. It was on a Saturday.

Q. All right. And was the gymnasium open to kids and adults alike?
[534] A. Yes, and that was the provision that they came in under, that there was an open gym at that time and if they wanted to come and share it with whoever else was there, they could do it.

Q. And I could have come that day, as well?
A. Yes, sir.

Q. With respect to the Boy Scouts or Cub Scouts meeting and using the pool facilities that you testified to on Direct Examination --
A. Right.

* * *

[535] Q. And was it also your testimony that if there is anything of a controversial or a potentially controversial nature that the sponsor

of that club would typically meet with you to discuss the proposed activity?
A. That's true.

Q. And in your job as head of the Activities at the high school, is it your practice to become involved in those sorts of discussions regarding outsider speakers?
A. Yes.

Q. Is it also true that outside speakers are occasionally brought in to address the students in a particular class?
A. Yes.

Q. And if there is anything of a controversial or of a potentially controversial nature in regard to that, is that discussed ahead of time?
A. Yes. I may not be involved in that discussion but I would be with the activity area.

Q. With respect to the activities and if you know with respect to the classroom setting, if we would have a potentially [536] controversial subject, are steps taken on your part to assure that even treatment or balanced treatment of the particular subject matter be given?
A. Yes.

Q. With respect to the Future Business Leaders of America, for example, there has been previous testimony that outside speakers come in and talk, is that correct?
A. That's true.

Q. Are you aware of the subject of conversation or the topic which was addressed by that outside speaker?
A. Yes.

Q. And what was that?
A. The last one was just -- and I think it was the last one -- was a topic about business. In FBLA two young people had started their own business. They didn't dwell on their particular name product or however but just the formulation of business and what they -- what they went through to develop and formulate that.

Q. You have had outside people come in to the school in connection with the Computer Club, as well, haven't you?
A. Right.

Q. Did you receive a request at any one time that the Computer Club allow a particular individual from a particular company to come in and talk?
A. Yes, I did.

[537] Q. And were you involved in the decision as to how the activity with that outside speaker was to be structured?
A. Yes.

Q. And what was your input in that regard? What was the request, first of all, and how did you handle that request?
A. Okay. The question posed by the sponsor to me was, "Is it okay to have someone come in who represents a company, that would visit with

youngsters in the Computer Club about computer usage and what they could do in terms of using a computer and what voluminous numbers of things could be done by individuals that were computer-smart?" My reaction was, "That's super, if that's what they will do. We can't permit them to be in the salesmanship of their particular company's product but if they are talking about computers and computer use, that certainly would be acceptable."

Q. So on that basis you approved the outside speaker --
A. Yes.

[539] Q. Mr. Huston, since the Boy Scouts have been permitted to meet at the school three years ago, has there been a change in Board policy that you know of?
A. Not to my knowledge.

Q. The same policy as far as then using the facility still exists?
A. As far as I know.

* * *

[540] **DAVID MOSHMAN, Ph.D.**, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

* * *

[541] Q. Dr. Moshman, where are you currently employed?

A. I'm employed at the University of Nebraska at Lincoln.

Q. And what capacity?
A. I'm Associate Professor in the Department of Educational Psychology.

MR. DAVIS: Your Honor, may I retrieve an exhibit?

THE COURT: Yes, you may.

MR. DAVIS: Exhibit 80. May I approach the witness?

THE COURT: Yes.

Q. I am handing you what has been marked as Plaintiffs' Exhibit 80. I would like you to take a look at that. Can you identify that exhibit for me?
A. Yes. That's my Vita.

Q. And what is the date on that Vita?
A. November, 1986.

Q. Is it fairly current? Is there any updating that is required on that Vita?
A. It's fairly current. There are a few things on it that are listed as in preparation that have been complete or in press that have been published, but no major changes.

Q. What are those things that are in the process of being published?
A. Let me take a look. The book by Moshman, Glover and Bruning entitled Developmental Psychology that's listed [542] as being in press has been published. It came out in January, '87.

Q. Anything else?
A. The chapter on Page 4 by Moshman and Eastman entitled The Creative Construction of Rationality, listed as in preparation is in fact complete. It hasn't been published yet.

Q. Dr. Moshman, would you briefly tell the Court about your educational background?
A. I received my doctorate in Psychology, in Developmental Psychology, from Rutgers University in 1977. Do you want previous to that?

Q. Yes.
A. I received -- I went to high school in Brooklyn. I received an undergraduate degree from Lehigh University in Psychology in 1971 and then I received a Master's degree in Developmental Psychology from Rutgers in 1975, and then my doctorate in '77, also in Developmental Psychology.

Q. Since your graduation and receipt of your doctorate, have you done any studies in Developmental Psychology?
A. Yes, I have. That's a major part of my job.

Q. Approximately how many studies have you done?
A. It depends I guess what you could as a study, but if you think in terms of published articles and chapters, I've published several dozen, as listed in the Vita, during [544] the last ten years.

Q. Could you please briefly explain to the Court some of those studies that you have done?

A. Yes. I've done some empirical research on cognitive development. My main areas is cognitive or intellectural (sic) development. And I have done studies on the development of various sorts of intellectual abilities, mostly abilities that involve scientific and logical and abstract sorts of concepts and reasoning during the period of adolescence and into early adulthood.

I have tested children ranging from fourth grade up through college age on a variety of intellectual tasks.

In addition to that empirical work, I have done some theoretical work on the nature of reasoning and rationality, in particular its development during adolescence and into early adulthood.

And then in addition to that, in the last five years I have been interested in First Amendment issues concerning the intellectual rights of children and students and how psychological research is relevant to those issues.

And I have published several articles in that area.

Q. If I were to ask you to clearly define your specific area of expertise, how would you do that?

A. I would say that I have two major areas. One area I would describe as the development of reasoning and rationality [544] in particular over the course of adolescence and into early adulthood and the other area I would describe as the intellectual First Amendment rights of children.

Q. What types of research or study have you done in the first area that you have described?

A. The development of reasoning?

Q. Yes.

A. Well, as indicated earlier, my empirical research in that area has consisted of looking at various kids of intellectual abilities, usually on the basis of theoretical issues. I would choose a particular kind of ability, such as the ability to test hypotheses or understand abstract concepts and logic, and then would set up a task and administer that task to children of an adolescence of the relevant ages. Typically, I've tested fourth graders, seventh graders, tenth graders and college students and then compared, of course, the ages.

Q. And you also testified that you had an expertise in the area of First Amendment rights, is that correct?

A. Right.

Q. And what type of an expertise is that? Is that as it relates to the abilities of children to reason and their cognitive abilities?

A. Well, it's somewhat broader than that. I've -- I edited a book entitled Children's Intellectual Rights that I [545] had a chapter in, and my chapter in that book develops a general framework for what sorts of intellectual rights children should have under the First Amendment. So it is an interpretation of the First Amendment as it would apply to children and that includes the issue of how empirical research on children's reasoning would be relevant to the application of the First Amendment to children.

Currently -- well, next week I will be presenting an expansion of that chapter in that work at the meeting of the Society for Research in Child Development in Baltimore and then I am currently working on a book to be published by the University of Nebraska Press entitled Children's First Amendment Rights. That expands on that.

Q. Okay. Now, you have testified about your expertise in the area of developmental -- the development of cognitive abilities in children, is that correct? Would you explain for the Court the process or the idea behind that? What process do you go through in assessing the developmental abilities of a child?
A. You're asking how I do it as opposed to how the child actually develops?

Q. Yes.
A. Well, to take a specific example of recent research, this is the research listed on my Vita as Moshman and

Franks, Development of the Concept of Inferential Validity. In that [546] research we -- we're interested in a particular logical concept, the validity of inference, which involved understanding, the -- well, being able to look at the form of an argument as distinct from the content of the argument and looking at whether a conclusion follows from premises, independent of whether it happens to be empirically true or false. And what we did to study that, we set up a variety of logical arguments, some of them valid arguments, some of them not valid arguments, some of them leading to true conclusions, some of them leading to false conslusions, and manipulating those variables, set up a variety of logical arguments.

In the first study in that series I then presented those arguments to children in fourth grade, seventh grade, and to college students, and asked them to sort the arguments as many ways as they could, and I looked at how children sorted those arguments, and then I asked them to rank them from the most to the least logical and looked at how they ranked them and found that the fourth graders, as expected, sorted arguments on the basis of what they were about and whether the conclusions were true or false, but not on the basis of the abstract logical connections.

College students, on the other hand, sorted arguments on the basis of the logical connections within them. They were attending to the validity of the inference.

Seventh graders fell somewhere in betrween. A [547] substantial proportion of them performed like the college students and a substantial proportion of them performed like the fourth graders.

We then did two follow-up studies within that same series of research where we were trying to see in more detail what accounted for the seventh graders' performance, and so we tried to explain the -- we did this again with fourth graders, seventh graders and college students and to each group we explained what a valid inference is. We gave examples of what we meant by validity and then asked them to sort by validity and we found that the performance of the seventh graders under those conditions shot up to the level of the college students. There was no significant difference in understanding of this abstract concept between Grade 7 and college, whereas, the fourth graders did not seem to profit from that. Their performance remained very poor. It appeared that no matter how you explained it, they just did not grasp this abstract logical concept. So that would be one example of a piece of reseearch along these lines.

Q. Now, I am not a psychiatrist so I have a little bit of difficulty understanding exactly how you develop your theories in this area. Is there any person who is recognized as the preeminent authority in child development?

A. Well, I'd say the singlemost important,most famous theorist in the area of cognitive development specifically [548] would Jean Piaget, who is a Swiss psychologist. He died in 1980. But there are many extensions and derivations of his theory that are still prominent.

There are people who disagree with his theories, as well. I don't want to -- I wouldn't suggest that he is the only major theorist but he's the singlemost important theorist in the area.

Q. And you personally endorse the views of Piaget in this area?

A. I would say my general approach is in, broadly speaking, in the Piagetian tradition. I think he's wrong on some specific details and in some respects my research has contradicted some specific assertions of his but I'd say his general approach seems to be on target and is the basis for most of what I do in this area.

Q. Could you explain for the Court what his approach is, as you understand it?

A. His general view is that children, as they go through development, change systematically in how they reason about things, that is, he believes

that changes in children's intellect are not simply a matter of learning or facts but a matter of fundamental changes in the way they think about the world, and he identifies four stages of development in this process. Would you like me to go through the stages?

Q. Yes, if you would explain the four stages of [549] development.

A. The first stage he refers to is the sensory-motor stage and this would apply during infancy. The infant knows the world through its own sensory and motor activities. It knows and understands things by physically acting on them.

The second stage Piaget refers to is the preoperational stage and this would be typical in preschool age children, and at this stage the child is capable of using symbols or mentally representing things. So the child now can think in the sense imagining something that is not physically present and thinking about it. The reasoning about those things still tends to be often illogical in various ways but nevertheless it is genuine reasoning in the sense of a genuinely mental activity.

The third stage Piaget refers to is concrete operations and this typically begins around the age of six or seven. Some research, recent research, suggests it may in fact begin somewhat earlier than that. The concrete child is more logical and systematic in their reasoning

abilities. They follow logical norms better than a preoperational child would.

And then the final stage Piaget refers to as formal operations and he indicated that this develops during early adolescence. Typically you begin seeing formal operational reasoning around the age of eleven or twelve. This is a more abstract kind of reasoning where the child can look at abstract [550] logical connections, can hypothesize things that are not -- that are not real, things that are counter-factual, and test those hypotheses.

Q. You mentioned the final stage. At what age would you say the final stage has become fully developed. You mentioned it began at the age of ten or eleven. When does that reach its full development?

A. That's a complex question. Piaget himself indicated that formal operational reasoning begins developing about the age of eleven or twelve and is fully developed around the age of thirteen or fourteen. More recent research, including my own, suggests that the development of formal operational reasoning does begin about age eleven or twelve. You don't find those abilities earlier and you do find them in eleven- and twelve-year olds, but that the full consolidation and generalization of those abilities can continue into adulthood. There is no clear cut end point. Even among adults, although you find virtually all adults, I think, are capable of

formal reasoning, you find differences in how well they apply it, and so an adult may not use formal reasoning in an area they're not familiar with, and as they get familiar with that area they may further develop their ability to use formal reasoning in that area. So I would say formal reasoning continues to develop potentially throughout adulthood.

Q. Could you identify for the Court at all a definitive [551] line when that final stage is reached in, say, the majority of children?

A. I think the only definitive line you can talk about is the line of when should the majority be capable of formal operational reasoning, and I would say that's at about age eleven or twelve, that is, children beginning at about age -- beyond the age of twelve or so all seem to be capable of formal reasoning. They differ greatly in how widely they apply it, how well it's consolidated and applied to different content, how efficiently they use this reasoning, and there is no clear cut line on that further development. But in terms of the formal abstract abilities being present, I'd say they're present in virtually all normal individuals by around age twelve or so.

Q. So it would be your testimony then that a junior high student would have reached the final stage in that development?

A. Yes, it would.

Q. And of course it would carry on to a high school student, as well, but the high school student has reached the line of development, it's just a matter of exercising his understanding, is that correct?

A. Right. I would say the only difference between, say, a junior high school student and a high school student and a college student would be in how widely they use these [552] abilities, the variety of content to which they can apply them, and the efficiency with which they use these abilities. Those kinds of quantitative changes. But there's no qualitative difference in terms of the type of reasoning that they are capable of.

Q. What about the average student in high school? How would his reasoning ability differ from that of a ten- or a eleven-year-old?

A. Fairly dramatically. I would say the average high school student is -- well, let me not say ten or eleven -- do you mean like nine or ten versus twelve? Where do you want --

Q. Well, you drew a somewhat definitive line at ten or eleven, or nine, ten and eleven.

A. Okay. I would say before that line, if you want me to compare a high school student with a child, say a 10-year-old who is not yet at that line, I would say there is a fairly dramatic difference. The typical high school student is capable of a wide variety of abstract abilities, being able to look logically at arguments, being able to formulate

hypotheses, being able to test hypotheses, whereas a typical nine or ten-year-old is pretty limited to concrete reality, that is, the ten-year-old can think logically about things that are real and immediate to him or her but not about abstract or hypothetical entities.

[553] Q. When would you say then would a child first begin to perceive such concepts as hostility or discrimination?

A. It depends on exactly what you mean by those. I'd say hostility can be perceived very young. Even an infant can perceive a kind of an emotional hostility and react to it, and discrimination in a very concrete sense of hostility toward me, I would say could be perceived by a very young child, certainly a preschool age child.

Now, discrimination in a more abstract sense, if we're thinking in terms of ideas like equal opportunity or equal protection under the law and the full legal meaning of those terms, those are pretty abstract concepts and probably require formal operational reasoning, so I would say children probably become capable of understanding those concepts beginning about age eleven or twelve.

Whether a given individual understands them and how well the individual understands them will depend on their experience with relevant kinds of issues. So I would say all individuals beyond the age of twelve or so are probably capable of

understanding discrimination in that abstract sense but they may or may not do so, depending on their particular experiences.

Q. So would you say that -- let's take an example. If you have a five-year-old black child, a girl for instance, would she be able to perceive at the age of five years [554] hostility towards her as a result -- or because of her skin, the color of her skin?

MR. DAUBMAN: Objection, lack of foundation and relevancy, Your Honor.

THE COURT: Overruled. I take it that this is foundational in nature perhaps. You may answer.

A. Yes, I think a five-year-old black child could perceive -- certainly she could perceive hostility toward herself and depending on circumstances she might get the idea that it has to do with her being black.

Q. Now, how would her perceptions differ if she were eleven or twelve years old?

A. I think an 11- or 12-year-old would be much more likely to be able to at least begin to think of the idea of discrimination against me because I'm black as having not so much to do with me personally but with black people in general, and even more than that, with an abstract idea of discrimination against people on the basis of race, and perhaps understand general legal concepts that could

relate to that kind of discrimination. So the understanding beyond the age of eleven or twelve, that is, beyond the -- within the period of formal operations would be at a more abstract level and would see the broader kinds of legal or moral issues associated with it, the understanding that the younger child would be more personalized.

Q. Okay. I want to get a little bit further along into the high school scenario and how the abilities of a child to reason in high school compare with those of a college student. Is there any definitive line at all between the abilities of a high school student to reason on a given subject and the abilities of a college student to reason?

A. I wouldn't say there's a definitive line. There may be some degree of difference between the average high school student and the average college student. If you think in terms of -- what complicates this is there are great individual differences among high school students and among college students. If you think of a range of intellectual abilities among high school students and the range of intellectual abilities among college students, you'd find a tremendous amount of overlap of those two ranges, though probably more college students would be toward the upper end of that and more high school students toward the lower end of that.

Q. In what way would a high school student be weaker in his reasoning ability than a college student?

A. A high school student probably lacks the wealth of experience that a college student has had, just in the course of living a certain number of years, and so the high school student, although capable of formal operational reasoning, may not apply it as broadly or as efficiently. If you introduce a specific issue, for example, to both groups, the college [556] student is more likely, depending upon the issue, to be familiar with it and to perhaps use formal reasoning whereas the high school student may not be familiar with that issue and may not reason about it in a formal or abstract way, although they would be capable of doing so if they had more experience with the issue. So the difference would be in terms of the application of the reasoning, depending upon your experience with various issues.

Q. Dr. Moshman, you were hired by me to testify as an expert in this case, were you not?

A. Yes.

Q. And are you familiar with the issues in this case at all?

A. Yes, in a general sense.

Q. What is your understanding of those issues?

A. My understanding of the issues is that a group of high school students at Westside High wished to form a voluntary religious group and was denied permission to do so by the

school, and that this -- well, at lesat in part that this issue relates to a law called the Equal Access Law, that the issue is given the fact that the high school permits a variety of student groups to meet on school premises, on what grounds can it select which groups can meet and which groups cannot, and specifically can it exclude groups specifically because they are religious groups.

[557] Q. Given your understanding of the issues, and let's assume that that understanding is correct, let's formulate that into a hypothetical, for instance. We've got an average high school in an average town. The attendance in the high school is approximately 1,000 students or thereabouts. The school permits students to engage in outside or extra-curricular activities, including the formation of school clubs. Let's assume that approximately 25 to 30 school clubs are currently allowed and permitted to meet by the school. In that kind of an environment, I would like to ask you a few questions and I want you to testify only to those things that you can testify to with reasonable certainty. Okay?

* * *

Q. If that school were to prohibit a religious student [558] club from meeting on the same basis as the other clubs are allowed to meet, what would the average student at that school perceive that denial to mean?

A. Well, a lot of students may not be aware of the issue, of course, but the students who have asked for the formation of the club and any other students aware of it might perceive a hostility toward their club, and, depending on rationale, might perceive this as a hostility toward religion if the only rationale given is that religious clubs cannot meet but other clubs can meet.

Q. If a religious club were permitted to meet in that kind of a forum, how would the average student view the relationship between the school in that kind of an instance and the student? The school's endorsement, as it were, of that club and the student's individual request to meet?

A. I think again a lot depends on the specific circumstances. I think if the school made it clear that any student group can meet and that the school, for example, in posting a list of student groups, if the school makes it clear on that list, these are voluntary student groups, the school doesn't endorse any of these groups, is not opposed to any of these groups, it's up to individual students if you wish to participate or not, I think the average high school student could understand that and would understand these are voluntary groups and the school is neither supportive of them [559] nor opposed to them.

* * *

Q. Can education of the student clear up any problem with regard to the endorsement of a religious club in the public school?

A. I think it could. This is where you get to the distinction I made earlier between concrete and formal operational reasoning. I think a child below the age of eleven or twelve might well lack the ability to understand the abstract distinction between a voluntary student group and a school-sponsored group, and it may be for that child, no matter how you would explain it, they would just not know what you were talking about and would assume any group meeting on school premises is somehow endorsed.

For a child beyond the age of eleven or twelve, they may or may not spontaneously understand the First Amendment issues involved here and understand that the groups are voluntary, but I think it could be explained to any child beyond that age in a way they would understand and they would recognize that the school is not endorsing the group.

Q. Is there a possibility -- let me rephrase that. [560] Would they perceive at all, and we are talking about a high school student now -- would they perceive at all by the mere fact that a religious club was absent from the forum, would they perceive that in any way? What implications would that give rise to?

A. It depends on why it's absent on the context. I think if the issue has never come up and there are just a variety of clubs and none of them are religious, most students would only notice what clubs are there and would not notice the absence. In general, people tend to notice what's present rather than what's absent.

I think if there has been an issue in the school where religious clubs have wished to exist on the same basis as other clubs and have been denied that opportunity, students who are aware of the issue may then perceive the absence of religious clubs and the presence of others and on the basis of that perceive some degree of hostility toward religious.

Q. Do you see any significant difference at all between the ability of a high school student to differentiate between teacher-directed or state-directed, if you would, activity and student-initiated and directed activity as compared to the ability of a college student to perceive that same thing? Do you see any significant difference between them?

A. I'd say there's probably little or no difference in the ability to understand that. There may be differences in [561] the spontaneous understanding of that, that is, if it's not explained by the school, a college student, because of greater experience, might more readily understand the nonendorsement by the school of groups that are allowed to meet and the high school student might spontaneously be more liable to

make a mistake about what's going on and perceive an establishment of religious. But I think with adequate explanation there would be no difference. I'd say this is similar to the research I described earlier where in terms of logical reasoning ability, in spontaneous understanding I did find a difference between the seventh graders and the college students in my study, but when the issue was explained and it just took five or ten minutes of explanation of what was going on, the performance of the seventh graders improved up to the level of the college students, whereas the performance of the fourth graders did not change. I think you would find a similar kind of phenomenon in terms of an individual's understanding of the abstract issues here in terms of school endorsement and voluntariness.

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[562] **WARD SYBOUTS, Ph.D.**, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VEITH:

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[564] Q. When you say "school activities," what are you referring to there?

A. School activities have been referred to in the past as co-curricular activities or extracurricular activities, and they involve such things as athletic programs, drama,

music activities outside of the classroom, and debate, and then go on into publications of students; you'll get into social activities, Student Leadership activities, Student Marketing activities, Student Leadership in the area of cheerleading, so you have a variety of student activities that are covered in that general area.

Q. Just give us basically a short historical background [565] as to the development of student activities in the public school system.

A. Student activities, as they have developed in the public schools, came about as a result of student pressure. Initially, student activities emerged in small colleges around the country. As public schools and secondary schools took form in this nation, in the early part of the previous century, school activities were really forbidden for the most part. Horace Mann brought in some speech activities and some chorus work in one of his schools as probably the first exception to the general rule that school activities were not permitted in the school.

But then as student pressure grew and as outside adult interests grew, educators began to realize that there were going to be school activities whether they sponsored them or whether they agreed with the idea or not. Consequently, after the turn of the century, after 1900, school activities began to be more common in

our public schools, and then in the 1920's there was an increase in the acceptance of school activities.

In the 1930's, you might say there was a maturity of accepting school activities into the secondary schools.

In the '50's, there was a wide expansion and as girls' athletics, for example, was included in the programs, that kind of expansion and maturity took on larger numbers in [566] the schools.

Q. And that has continued to develop since then?

A. I think that after the 1960's there has been a leveling off. In other words, you might call it a saturation point of activities in schools.

Q. Is it safe to say, Dr. Sybouts, that the primary emphasis behind student activities was the student interest for various activities?

A. Very definitely. Student interest was perceived in these activities and, as I mentioned, they were inevitable. Young people are going to be young people. They are going to be involved, and school people came, I think, to a realization that it would be much better to capitalize on this interest and this involvement to improve the educational experience for young people, and they also felt that it would be much better as a group of school officials to have control of those activities, so that

they could give some direction to those activities, and in so doing assure that they would contribute.

* * *

[568] Q. Would you please -- you have used the term "school program" and I believe that in your writings you have subdivided that program into different areas. Would you please explain to the Court the various subdivisions in a school program as you see them?

A. The school program for secondary schools can be divided into subcategories and this is something that could be done differently and this is just one way it's done. But there are those courses which are required courses. They are required for graduation. Then there are those courses that are elective courses. They contribute to the students' credits that add toward the total number needed for graduation but they are not required specific courses. They are electives [569] from which the students can choose.

Then there's a third area that has often been referred to as the co-curricular or extracurricular area, the area that I refer to as school activities.

There's a fourth area that can be identified and that would be student services such as counseling and health service.

There's a fifth area that is auxiliary services. In other words, your food services and your transportation services are the ones that are generally identified as the fifth or auxiliary area.

Q. Within the area -- I think the third area which you indicated was student activities, can that also then be subdivided?

A. Yes, and there again people divide that differently in terms of their perception and how they might see it. I've suggested that one category could be identified as performing activities. Performing activities are those activities where students literally go through an activity that is seen by the public or read by the public -- athletics, drama, music, speech or debate, and school publications could be considered as performing activity.

You can have other categories. Leadership activities -- leadership activities might involve such activities as Student Council or Student Forum or Student Government, it [570] goes by different names in different schools.

Another area that is involved in student leadership typically is the area of cheerleading and the school spirit leadership.

You have other categories that can be identified such as your class-related activities in the way of clubs. These are usually listed as a Spanish Club or Computer Club, a lot of

activity and club emphasis in the area of Vocational Education or Business Clubs.

You then have social activities and social activities again can be divided in various ways. You can have school dances. You can have school banquets.

And then ceremonies where you might have an awards ceremony or an awards assembly, and you can go on in that point until you get to the graduation activities. And then you will have some supporting kinds of activity where students get into merchandising and in this day and age that's a pretty big business in some schools.

You'll have student services activities, and not all schools have all of these activities, but these are general classifications that you can use to identify different kinds of activities.

Q. Within the club area I believe you have mentioned that there was a subdivision I think that you called those that were extensions of a class, such as the Spanish Club?

[571] A. Yes.

Q. Are there also other clubs like service clubs? Is that a category also?

A. It could be. Some people talk about those as categories. Other people don't.

Q. Where would those fall? I mean would that be a subcategory under club?

A. I think they could be moved back and forth from one category to another because these categories are not ironclad. I think a service club could be under an area of leadership.

Q. You also find a subcategory known as special interest clubs?
A. There are some special interest clubs. An illustration that might be a Ham Radio Club.

Q. Would Chess Club be a special interest club?
A. That would be a special interest club.

* * *

[572] Q. I am going to talk to you briefly about trying to divide clubs into what is known as curriculum or non-curriculum and I would like to have your definition as someone who works in this field of what curriculum would be from the standpoint of a club. What is a curriculum club?
A. I think this rose from, first of all, a philosophy about education. In other words, if a person has a rather broad perspective of education and the philosophy that grows from that broad perspective, they might identify what is curriculum-related in one way. In contrast to that, the person who might have a narrower view, a narrower philosophy, of curriculum might, in turn, identify what is curriculum-related and what is non-curriculum-related differently. So if we might, for the sake of building a base, indicate that there

are those theorists of curriculum and we have certain people like Alexander and Sahler who have written about that because [573] they have studied curriculum from a historical and an application base. Or you might have another curriculum person by the name of Tyler and he, too, has studied curriculum but looked it from a little different and a little broader base. Tyler talked about the total society and the learner and the content. And these kinds of curriculum specialists suggest that the curriculum is the total learning experience in the school.

From a practical point of view, I think we find a little narrower view of curriculum, and there is a recent book and I just was able to look it over very recently, it is written by a man by the name of Clathorne, and the book is entitled Curriculum Leadership, published in '87. In this particular book, unlike some of the other theorists, Clathorne is taking just a little bit narrower view of curriculum and he is looking at it from a more practical and less theoretical perspective.

But which of these theorists is right? I don't think there is a right or a wrong. It is simply a matter of where you are looking at something from your vantage point. So you have the theorists such as those that I mentioned who see everything that is done in the school as the curriculum of the school, and in fact if we go back to 1959, Robert Frederick wrote a book on

extracurricular or co-curricular activities entitled The Third Curriculum because he was seeing [574] school curricular activities as being a total part of the curriculum.

In contrast to that, you will have people who say the curriculum is made up of the courses that are offered for which there is credit granted. How you are going to draw that line between one extreme and the other is going to depend upon how you perceive it.

So if we look at what has come through the legislation on this, I don't think, as I have read that, that the legislation is taking the broader theoretical view. They are more in the middle ground, which is saying that curriculum is consisting of courses that are offered by the school.

Q. As such, I would like to go down through a list of clubs that you will find on Exhibit 63 and ask you in your opinion what you just testified, whether those clubs would fall within a curriculum-related or a non-curriculum-related grouping.

THE COURT: Under whose theory, Mr. Veith?

MR. VEITH: Under the theory that he had just stated that he felt the Legislature had adopted on equal access.

MR. DAUBMAN: On that basis, I would object to it. It calls for a legal conclusion of the witness, Your Honor, interpreting legislative history of the Act.

THE COURT: Well, it certainly may call for some mixed facts and law. I will hear it and try to sort it out [575] if I can. You may proceed.

Q. From that, Dr. Sybouts, looking at the Exhibit 63 that you have there and the activity, first of all, I guess starting out with what is known as Interact, have you had an opportunity to review this on a previous occasion and look at the description of the club known as Interact?

A. Yes. Interact would be by some definitions a non-curriculum-related club. But this is a hard line to draw and if we look at some of the other activities I think that the difficulty in drawing that line becomes even more apparent.

There is a club that is listed, International Club I believe is the title -- let's see if I can spot it very quickly --

Q. The top of Page 2, the third one down.

A. Yes. Well, that's the Interact. And then International immediately below that. The international Club is probably non-curriculum-related by the definition of some but it would be curriculum-related if you were to relate it to the goals in the Westside School system which has as

one goal global education. Yet there is no course of International or Global Education, to my knowledge, in their curriculum.

Q. I am asking you to testify, however, not both sides, but as you have studied the guidelines of the Equal Access Act and as you believe the line should be drawn from that [576] where Congres (sic) maybe stood in that, whether Interact would be curriculum or non-curriculum related.
A. Interact, as I would understand it, would be non-curriculum.

Q. Okay. How about International Club?
A. That's a tough one to decide upon. I would relate it as a curriculum-related club because of the goal that is set in the Westside School system.

Q. How about Chess?
A. That would be more likely considered as a non-curriculum-related club.

Q. How about Subsurfers?
A. That would probably be one that could be debated but there is a swimming class and so it could be curriculum-related to that Physical Education class.

Q. Would it make any difference whether an individual received credit or an extra grade by reason of having been in Subsurfers?
A. That's just one more complicating way of looking at this. I would not see any of the information that I have read or any of the interpretations that I have seen that would suggest that you had to have credit as a part

of the school activity to make it curriculum-related. But, as we know, for example, if we are in Band and the Band instructor indicates at the beginning of the year, and the policies are set up, the [577] regulations are set up, so that the Band student is expected to march at the football games or to play at certain activities and they get their final grade in Band as a result of participating in those activities, sure, then the grade is a part of the school activity.

In other activities, you will not find that to be the case and yet they can still be curriculum-related.

Q. How about National Honors Society?
A. National Honors Society is a national honorary that is sponsored through the National Association of Secondary School Principals, and students are chosen for admission into the National Honors Society based on their academics, on their service, on their leadership. It's very difficult to say that this is non-curriculum-related when their grade point average is one of the criterion that is reviewed in selecting students for it and yet it is not related to any one specific class.

Q. How about Welcome to Westside?
A. That would be a service activity and probably not related to a course and therefore it would be considered non-curricular.

Q. How about Student Advisory Board and Student Forum?

A. That in most schools would be considered non-curricular. In some schools where they have an actual class for leadership and a class for which students can get [578] credit, then by that definition, that relates an activity to a class that's in the curriculum, it would become curriculum-related. But in most schools, at least eighty per cent of the schools that I am familiar with, they don't have a class in Leadership, and, therefore, your Student Council or your Student Forum is non-curricular.

Q. You have reviewed Exhibit 63 and the various clubs that were on it. In your opinion, does Westside high School have one or more clubs that in your opinion, according to what you have seen Congress looking at, are non-curriculum-related?

A. Yes.

* * *

CROSS EXAMINATION

BY MR. DAUBMAN;

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[579] Q. In order to determine whether a particular high school student club is curriculum-related or not, is it necessary to look at the required and elective courses that are offered at that particular school and the course goals and objectives of those particular classes?

A. I think that logically a person should do that. I don't know that it would be absolutely necessary. In other [580] words, I'm not sure that if the officials in any school were to try to make that distinction, they would need to know whether a course was required or elective. In other words, that distinction is a distinction which may help people understand how a program or a curriculum is put together but it may not be necessarily very helpful in terms of knowing whether or not there is a relationship between an activity and courses. I think they would need to know simply whether or not that course was in the list of courses that granted credit.

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[581] Q. With respect to your testimony regarding Subsurfers, you expressed the view that that was probably curriculum-related or could be curriculum-related because of the tie-in to swimming at the high school, and swimming was, as I understood your testimony, something that was done in Physical Education classes, is that correct?

A. That's correct.

Q. Would you take personally, as an expert in this case, the same sort of approach with respect to the other student clubs, for example, Student Forum and Student Advisory Board?

A. Yes, and an illustration might be the student cheerleaders. This gets to be in one of those shaded areas again. If athletics is considered

curriculum-related, then is the cheerleader, who is at the athletic contest, involved in cheerleading, a part of that athletic contest or is the cheerleader separate? I think most people would say, "Yes, cheerleading is a part of that; therefore, it must be curriculum-related."

Q. With respect, though, to Student Government, Student Advisory Forum, would it make a difference in your opinion as to whether Student Government is curriculum-related [582] depending on the type of specific course objectives and goals in the government Department of that high school?

A. Yes, I think it could and yet that's a matter of where that shaded area comes into view and where the line is drawn. But just as the International Club can be identified as curriculum-related because of the goal of global understanding, then you could take that same reasoning and say that the Student Forum or Student Council or Student Government could be curriculum-related as it might relate to objectives in the curriculum that would try to help students develop a better understanding of our society and our government and how it works.

Q. If you had, Dr. Sybouts, as a goal and objective in the Sociology Department of the high school, a goal and objective of community service and community involvement, and if in fact for extra credit in one or more Sociology classes you could take part

as a student in community involvement, would that affect whether or not a club like Interact is curriculum-related?

A. Yes, I think it could.

Q. In what way?

A. Again, there are specific objectives within the school curriculum or the documented curriculum that would focus on community service and then if it could be seen that those specific objectives within the documented curriculum [583] were reflected in a specific course and those course activities -- or let me not call them activities -- the things done in that course led then to out-of-class activities related to Interact or to other kinds of service fucntions, (sic) then you could follow that logic to say that it was curriculum-related.

Q. I want you to assume, doctor, that one of the course -- or some of the course objectives in the Math and Science Departments at Westside High School deals with abstract thoughts, analytical thinking, logic, those sorts of things; I want you to further assume that those processes are involved in the playing of chess; under those circumstances can chess be viewed as related to curriculum?

A. We're taking still a further leap into that -- that line of reasoning.

Q. Grey area.

A. Yes, and I think it would lead to further debate because I think it's a little further from the content, and it would be harder to argue that the

activity of playing chess was that closely related. So I think that would be a harder line to draw.

Q. I am going to read a statement to you, Dr. Sybouts, and I would like you to answer if you agree with this statement or not. "While there are numerous definitions for the curriculum of schools, it is defined here as the total of [584] all the school-related experiences provided for the growth and development of pupils. The curriculum can be categorized as follows: A) Required courses and mandated programs; B) Elective courses; C) School activities programs; D) Auxiliary services and student affairs. All four elements are needed." -- Do you agree with that statement?

A. Yes, even though that statement has four categories, it grouped two categories into one, the auxiliary services and the student affairs.

Q. Were you, in fact, the author of that statement?

A. Yes.

Q. And the first part of that statement talks in terms of "There are numerous definitions for curriculum," but you define it for purposes of what I wrote --

A. Yes.

Q. -- as encompassing those things?

A. That is right. That is my personal view.

Q. And that was my next question. From your personal view as an expert in this area, do you define student activities and clubs as curriculum?

A. Yes, I do.

* * *

REDIRECT EXAMINATION

BY MR. VEITH:

[585] Q. Dr. Sybouts, isn't it true under this broad theory that Mr. Daubman was just asking you about, just about anything could come under the school program or curriculum as you call it, right?

A. That's right.

Q. And in your article you are in effect using the term "school program" and "curriculum" interchangeably, aren't you?

A. Yes.

Q. Because earlier you had testified that this was a school program, a total umbrella, right?

A. That's correct.

Q. Now, your view that you hold is a narrower view of what is curriculum-related than what you perceived was meant by the Equal Access Act in the hearings, correct?

A. Yes. In other words, the people who developed the equal Access Act used a different definition than my own personal definition.

Q. What you were just testifying to with Mr. Daubman was your own personal definition and not what you perceive from the materials provided to you?
A. That is correct.

Q. Okay. Under your particular definition, laying aside [586] all the other problems that may exist with a separation of church and state et cetera, could a Bible Club under the theory that it adds to the total program of the school be considered to be curriculum-related?
A. Again, looking by whom are you following in terms of a definition? If you're taking the Equal Access Act, then I don't think it would be curriculum-related. If you are to take my personal view, then I think it would be, and, again, linking that to goals and objectives, see, there are goals and objectives of the highest priority in the Westside Schools. They talk about values and morality.

Q. So under that theory, if goals and objectives are to develop good citizenship, develop morality, increase knowledge and skills, et cetera, a Bible Club under your definition would be curriculum-related?
A. It could be.

Q. Just like other clubs that you talked with Mr. Daubman about that could be?
A. That's right.

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[590] **JAMES E. FINDLEY, Ph.D.**, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAUBMAN:

Q. Dr. Findley, as principal of Westside High School, are you familiar with the operation of student clubs and [591] organizations?
A. I am.

Q. Do many of the clubs use the bulletin boards at the high school to announce meetings and activities?
A. Yes, they do that and they also put up other signs around the building on the walls, on butcher paper.

Q. And what are these signs? Do they announce student clubs and activities?
A. Right, events that they've got coming up or that they want to emphasize to get other kids to know about.

Q. Does the school have any regulations, prohibitions or restrictions regarding the posting of meetings and activities of the student clubs?
A. Yes. We don't allow anything lewd or crude to be put up. We also deny them or tell them not to put it on painted walls and that kind of thing.

Q. With those exceptions, are there any restrictions regarding the posting of such club announcements and activities by those clubs?
A. Not really.

Q. Do all of the Westside high School student clubs have the right to use these bulletin boards and to make these signs and post them on the walls of the high school in order to announce their meetings and activities?
A. They do.

[592] Q. Are there any clubs that have been denied that right?
A. Not to my knowledge.

Q. Do many of the Westside High School clubs receive coverage of their activities in the Westside High School student newspaper?
A. Yes.

Q. Are there any prohibitions regarding such coverage of club activities in the newspaper other than circumstances where it might be libelous or obscene?
A. No.

* * *

Q. Does the high school Year Book contain articles regarding many of the clubs and the activities of those clubs during the previous year?
A. Yes.

Q. Are there any prohibitions regarding coverage of the club activities in the high school Year Book, again other than circumstances where there is a potential for libel or obscenity?
A. No.

[593] Q. Are Westside High School student clubs allowed to have announcement of club meetings and activities over the public address system of the school?
A. yes, they are.

Q. Is that done on a regular basis?
A. No.

Q. How is it usually handled?
A. We usually try to limit the use of the intercom because it's fairly disruptive to the school day, so anything we do would be -- (clearing throat) excuse me -- we try to do that outside of classes or before school, and on occasion we let kids use it for special announcements for kids during homeroom time.

Q. Is there a homeroom at the beginning of each school day?
A. Yes.

Q. In that homeroom does the homeroom teacher make announcements to his or her homeroom students regarding school events and activities?
A. Yes. That's one of the primary duties of the homeroom teacher during homeroom is to make kids aware of activities that they may be involved in or affect them when activities they're involved in meet.

Q. Does the homeroom teacher receive a typed list of those announcements?
[594] A. Yes. At the start of every school year in an opening packet, the homeroom teacher receives a copy of the activities available.

* * *

Q. No. My question is does the administration have any [595] restrictions regarding those announcements before they give them to the homeroom teachers?
A. Yes. We require that the sponsors sign the notes that kids bring up to put into the announcements so that they are aware of what we are going to announce.

* * *

[598] Q. Does Westside High School conduct a Club Fair each year?
A. Yes.

Q. Will you describe for the Court exactly what takes place at the Club Fair?
A. Under the auspices of Student Government, they sort of coordinate that, under Roger Hering, Assistant principal, and they -- clubs that are interested in letting students know the activities of their club indicate to Mr. Hering that they would like to have a booth, what we call a booth, it may be a table or something set up where they would promote their club and also have a sign-up sheet for the young people available to participate.

Q. What part of the building is the Club Fair held in?
A. It's held in our -- what we call our Rec Gym, our old Gym, which is right next to the concessions stand, about right centrally located again in the school.

Q. And does this Club Fair take place during the school day?
A. Yes, it does.

Q. Do all of the student clubs at Westside High School have the opportunity to participate in Club Fair?
A. They do.

Q. Do the clubs have the right to solicit new members [599] at the Club Fair?
A. They do.

Q. How long have you been a Principal at Westside High School?
A. This is my third year.

Q. Prior to that time was it your previous testimony that you were a Vice Principal at Westside?
A. Yes.

Q. Was that between 1976 and '84?
A. Yes.

Q. Prior to 1976 were you an assistant Principal at Westside?
A. I was.

Q. Was that between 1970 and 1976?
A. It was.

Q. In your capacity as Principal at Westside High School have you had daily involvement with high school students?
A. I have.

Q. Was that also true when you were a Vice Principal and an Assistant Principal?

A. Yes.

Q. During these time periods have you had the opportunity to observe the reasoning ability of high school students?

A. Yes.

Q. You also had the opportunity to observe the ability [600] of high school students in regard to perception, understanding, abstract thinking, analysis?

A. I have.

Q. According to the uncontroverted facts set forth in the Order on Pretrial Conference in this case, Bridget Mergens requested of you in January of 1985 permission to form a Christian Club at the high school that would be identical in formation, rights, privileges, terms and conditions as other Westside High School-affiliated student clubs except that her proposed club would not have a faculty sponsor. If you had allowed such a club to form and meet and if such club had engaged in and was afforded the same rights and privileges as the other clubs at the school, do you have an opinion as to whether the high school students at Westside would view the Christian Club as evidencing or constituting an endorsement of Christianity over other religions?

* * *

A. High school students, in my opinion, interpret things [601] based upon what has happened in the past and,

you know, what the procedure has been, and I would think if we had a club that was a Christian Bible Study Club or whatever the club might be, that the way we have functioned in the past they would very easily see that as an endorsement of a club or activity by the school.

Q. When you say "Based on how we have operated in the past," what are you referring to? What do you mean by that?

A. We've always had a sponsor in charge of a club and we've always had that club, the organization of that outlined and been aware of it, and we've always encouraged kids' participation in clubs and activities. In fact, I talk to -- when I talk to parents I emphasize the importance of being involved.

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[602] Q. Could you briefly describe for the Court the approximate percentages of unstructured time for tenth, eleventh and twelfth graders?

A. Tenth graders are unscheduled probably about 20 percent, 25 percent of the time. Juniors, 30 to 40 percent, and seniors 40 to 50 percent.

* * *

[603] Q. During unscheduled or unstructured time are Westside High School students allowed to go to various areas within the high school building?

A. Yes.

Q. What are some of those areas?
A. We have Instructional Material Centers or Resource Centers in Science, Social Studies, English, Math, Foreign Language, Business. They can go to one of those areas. [604] They could go to a laboratory area in Science or Art, possibly even in Physical Education there are laboratory areas, or they could go to the cafeteria which is a talk area.

Q. Other than -- with respect to the cafeteria, you referred to that as "a talk area." Could you explain to me what you mean by that?
A. Students can come in there and they have to be seated and can talk about -- they don't have to be working on a specific subject in that area although they may be.

Q. Are students allowed to talk in the other areas that you testified to, the Instructional Material Centers, Science labs, et cetera?
A. They are allowed to talk in those areas although the structure there would be greater, more controlled, and at times emphasize zeroing in on the subject more although there is some open discussion.

Q. Focusing on the cafeteria as a place to go during unstructured time, do students in fact informally gather in these areas to discuss matters?
A. Yes.

Q. Do you or does the school in any way regulate or censor the content of the students' speech in the cafeteria?
A. No.

Q. Have you observed Westside High School students discussing political issues in the cafeteria?
A. Yes.

Q. Have you observed Westside High School students discussing religious issues in the cafeteria?
A. Yes.

Q. Have you or to your knowledge any member of the administration and faculty at the high school regulated, prohibited or censored any such speech activities in the cafeteria?
A. No.

Q. What time does school begin in the morning?
A. 8:00 o'clock.

Q. Does each morning of the school day begin with a homeroom?
A. It does.

Q. That homeroom commences at 8:00 o'clock?
A. Yes.

Q. What time does the high school building open in the morning?
A. 6:30.

Q. Are students allowed into the building beginning at 6:30?
A. Yes.

Q. Between 6:30 in the morning and 8:00 o'clock when homeroom begins are students allowed to go to various areas within the building?
[606] A. Yes.

Q. What are some of those areas where students are allowed to be present?
A. Actually almost any area that is not locked. They tend to congregate, probably, in the corridors and in the cafeteria.

Q. Could you describe or explain to the Judge what areas are typically locked between 6:30 and 8:00 o'clock in the morning?
A. I'm sure there are probably some individual classrooms locked but most other areas are open.

Q. Do Westside High School students in fact informally gather in these areas and engage in conversation?
A. Yes, every day.

Q. Does the high school or anyone at the high school in any way regulate or censor the subject matter of those conversations?
A. No.

Q. At the time Bridget Mergens made her request for the Christian Bible Study Club, did you advise her that you had no objection to her meeting with other students informally to discuss Christianity or religious matters?
A. I did.

Q. What was Bridget Mergens' response to that suggestion?
A. Bridge pursued that and said she wanted to have this [606A] particular group recognized by the school.

* * *

[607] CROSS EXAMINATION

BY MR. VEITH:

* * *

Q. Dr. Findley, since the bulletin board is so freely [608] available, would it have been possible for the school to place a notice on the board, allow the Mergens' group to meet, and place a notice on the board that although you had, let's say, a monitor in the club that it was not an official sanctioning of Christianity, so to speak?
A. Could we do that?

Q. Could you have done that?
A. We probably could have. We've had no reason to do that in the past.

Q. Could you have made an announcement in the newspaper or over the intercom again stating that although the club was being permitted to meet, it was being permitted to meet because of an interpretation of the Constitution or the Equal Access Act and that the school was not endorsing a particular religion by allowing this group to meet?
A. Yes, again I guess I never got to that point.

Q. You never considered that as an alternative to a complete denial of the club to meet?

A. Right, because the request was to have the club and I saw that immediately in the context we have already talked about.

Q. We briefly discussed I guess the Club Fair. There is no requirement, is there, on the part of students to join a particular club at the Club Fair, is there?
A. No.

[609] Q. And students don't go running out grabbing other students and pulling them into clubs, forcing them to join, do they?
A. No. Kids talk to them pretty, you know, aggressively at times about joining clubs.

Q. It's an explanation of what the club does, right?
A. Not always.

Q. Encourages them?
A. Just to encourage them to join the club, yes.

Q. Dr. Findley, back to this modular system and open system. If Bridget Mergens had never asked permission to use the facilities at Westside High School and if her group in fact had gone to meet after school hours on a voluntary basis, what action would you have taken?
A. I may not ever would have known.

Q. If you had known, what would you have done?
A. It depends on the context of how she asked the questions.

Q. If you had found out that there were a group of students with Miss Mergens meeting in one of the classrooms after school, would you have done anything about that?
A. Probably not if I wouldn't have known the context of it. No.

* * *

[610] Q. Would you, Dr. Findley, have told those kids they couldn't meet?
A. If what?

Q. If they were meeting in a classroom in your school [611] or after school discussing religious subjects?
A. I probably would not have inquired into that.

Q. Do you recall testimony -- I'll withdraw the question. The question is if you had known they were in the classroom discussing religious subjects on a voluntary basis, would you have asked them to stop doing that?

* * *

A. If -- if that -- if I perceived that as a formal thing that they were going to continuously do and emphasize within the building and if I perceived that that was what was happening, I would have probably not let them meet. But if they were just discussing as a group of kids, I'm not going to go in, you know, and stop that.

Q. Okay. Dr. Findley, you heard testimony, I believe, while you were in the courtroom that Lisa Healy and three or four other students on a regular basis in the morning in the IMC room and they meet for fellowship, if you will, to discuss [612] religious topics and to encourage one another. Do you intend to prohibit them from continuing to meet like that?

A. I don't know that that's all they meet for. I didn't understand that that way. I assumed they got together socially at that time, and the way I remember that discussion was they could or could not talk about that, and it has not been our practice to go in and monitor a kid's speech.

* * *

Q. If the Mergens group had met on a regular basis after school in one of the classrooms, would you have prohibited them from meeting?

A. I think I just answered that in the sense that if I would have perceived that as a formal ongoing thing, that they were making a formal meeting, then I would think that would depend on a number of things, and I would have probably not let them continue. But if it is just for them to get together and talking about it and whoever happens to show up or there happens to meet, I wouldn't object to it.

Q. How would you make a distinction as to whether it was formal or not?

A. I think it would become obvious if that were something [613] that the group themselves made known and said, "We're meeting there regularly and, you know, you can come in if you want to come in," then I would not -- I would have probably intervened.

Q. You would have told them they couldn't meet?

A. Yes.

Q. On what grounds?

A. The same grounds that I had before. I think it would be in violation of our school policy and also my understanding of equal access would be that they have somehow formalized that outside of me, and there's got to be some line there where that decision -- you know, somebody has got to make a decision on that and if you just do it without talking about it, at some point you draw the line and --

Q. Who draws the line, Dr. Findley?

A. I suppose I would have to, in the building.

Q. Based on your determination as to when it becomes a formal meeting, is that right?

A. Well, and I -- whenever that happened I would discuss that with other people. I wouldn't just go down there and make that decision point blank. I'd see what the situation was and I would talk to other people in that process, like Dr. Tangdall and Mr. Huston.

Q. Would you try to ascertain what the group is discussing?

[614] A. I would not go down there and stick my nose in on the kids just to go down and see what they're talking about, no.

Q. Would you ask them what they were talking about?

A. Probably not. Normally I would not if kids were meeting and talking, unless it became something -- something that became known to me. I guess I don't know where that line is. Maybe you do. But I don't know how that becomes known to me, however it becomes known to me. I would not go down and supervise kids constantly, if that's what you're asking me. No, I would not do that.

* * *

THE COURT: I think I have a couple here. A small amount of confusion and it may not be all that important, but I have a little confusion about the use of the bulletin boards or posting things. You indicated that there were no restrictions on using the bulletin boards and posting things but I'm not sure, is that limited to the in-school clubs, I mean the sanctioned clubs?

THE WITNESS: Yes, it is.

* * *

[615] THE COURT: So things may get up without the sanction of the administration and then they --

THE WITNESS: And we take them down.

THE COURT: -- come down if they're noticed.

THE WITNESS: In fact, the poster that you are referring to, I took down.

* * *

[616] THE COURT: Now, you have testified, if my notes are accurate, that in your opinion that the school by letting a club organize and meet would be seen by high school age students as an endorsement by the school of the subject matter of the club. I believe that is my understanding of your opinion.

THE WITNESS: An endorsement of the club.

THE COURT: Well, you said -- I think there was a question asked, "Would you -- would, in your opinion, the students think that the school was rendering an endorsement?" --

THE WITNESS: Right. Can I --

THE COURT: -- of the --

THE WITNESS: Yeah, I think they could in light of the way we have always functioned because we've encouraged kids to join clubs and activities, and in that sense I could see that they would think we endorsed it.

THE COURT: And I guess my question was your reasons for that and at least you have given me one and that is because of

the historical way in which clubs have -- that you have [617] encouraged people to organize and participate in clubs?

THE WITNESS: Yes. I've never -- I don't ever recall a time when I would not have felt comfortable in endorsing a particular club in the sense that it would be something that would fit within our policies and our mission and goals statement and that I could encourage kids, if they had an interest in that area, to be involved in -- all kids.

THE COURT: And I don't know how appropriate this is but, for instance, based upon that opinion, you would be with regard to Interact, which is the Rotary-affiliated group, for instance -- you would be endorsing service clubs or you would be endorsing the message of service clubs or you would be endorsing the Rotary say over Optimist or Sertoma or Kiwanis or something? I guess I am troubled by that --

THE WITNESS: yes, I understand. I don't -- I don't perceive it as endorsing Rotary at all, Your Honor, as far as interact is concerned. I think that's fairly far removed, in my opinion, and I endorse the idea of service.

THE COURT: Of service clubs or service?

THE WITNESS: Yes, right, but I would not see endorsing Interact as endorsing Rotary. I've never thought of it that way.

THE COURT: You endorse the idea of service for someone who is interested.

[618] THE WITNESS: Yes.

THE COURT: I mean you don't look down on them if they don't think a service club is for them but that it is a laudable pursuit, to concern yourself with service and so forth?

THE WITNESS: Yeah. I would say that service is something that we would encourage young people to look at. I think there is more and more of a feeling that that's a valuable part of what young people do. So that they know what that means, to give of their time in a cause of -- you know, in some sort of a cause that they feel they have an interest in. And I think, personally think, that that is something that I would see appropriate for all students. You could even make a pitch and say, "You ought to consider that as an experience, an educational experience and a learning experience, that you should have." I could very much see that for all young people.

THE COURT: How would that differ from your view in giving a generalized -- the same generalized sort of endorsement for participating in the political process even if it involved a political party or a League of Women Voters or whatever? Is there a differentiation you see in the message you would be conveying with this endorsement?

THE WITNESS: I would consider young people to become involved in political -- you know, politically what they [619] believe on a general overall basis but not encourage any one specific political kind of activity, and I would -- I think again that's something to become involved in, in

how government works, the process of government and what you believe in. The important thing is that you make the effort there and try to do that but I would -- I see them both very similarly in the sense of endorsing one thing or one idea or one particular political party or one particular service club, I think that's a different kind of thing.

THE COURT: But you don't view Interact as endorsing a particular service club?

THE WITNESS: Right.

THE COURT: But I guess where I don't see the difference is where you endorse political involvement generally and then you let them pick Rotary or Kiwanis or Sertoma or the Republicans or the Democrats or Independents or whatever. I guess I'm --

THE WITNESS: In my time at Westside High School, the experience -- my experience with Rotary, as far as Interact, is I just haven't experienced that. I've seen Interact as a club and no -- I don't think, you know, that there would ever be an occasion where I have talked to anybody about endorsing Rotary with students, with the sponsor, with anybody involved there, and so my perception of Interact has been as a service club unrelated, really, to Rotary. That [620] has not been a concern to me.

THE COURT: One last area here. There have been some questions and answers back and forth about students meeting in the cafeteria or some similar place and having fellowship and/or discussing

religious or lack thereof and so forth on an informal basis and sort of a -- I think you testified, if my notes are correct -- unregulated speech I don't know if you used the words "unregulated speech" -- on almost any subject was not censored by the administration at Westside High School, and I don't know if it was you who testified earlier or perhaps Dr. Tangdall or someone else about recommending the elimination of all clubs at the school if you were forced to permit, say, a religiously-oriented club or some such thing to meet, and the reason given for that, if I recall -- perhaps the reason I raise this is I may have misunderstood -- was that parents send their children to school and there is a reluctance to make available for them subject matter with which their parents may disagree, through a club, and I guess I'm troubled by the difference here. If you know that young people at Westside High School are discussing religious or politics or communism or whatever they may want to discuss on an informal, unregulated basis, where is the line, the bright line or the grey line or whatever line between the risk that Child X is going to inadvertently or on purpose sit down at a table in the cafeteria and get involved in a [621] lot of far-ranging discussion?

THE WITNESS: That's a good point. It seems to me that there's no way that I could regulate the speech of young people outside of the school day. I mean, they can be with whoever they want to be, and when they're in school I certainly can't monitor what they are talking about with their friends before school or between classes or whatever.

THE COURT: And I have a sense that you're reluctant to get into the business of attempting to regulate that.

THE WITNESS: That's right, I am, but I think from another perspective, and looking at it from my own perspective and how I interpret what the School Board is saying, and I think what parents expect through that School Board expectation is that we not put together a -- or that we have a club that would in effect say, "Yes, we do have it, we do recognize it but we can't make a decision on who enters and exits that, but, yes, it's there and it's known and it's available to everybody," so it's seen as our endorsement of it or could be seen as our endorsement of it. I think there's a distinction there between what happens when young people simply get together and talk and what's provided, and to me that's where I see a distinction.

THE COURT: And you say, "In what's provided," and what is provided? A schoolroom? A monitor? An access [622] to the bulletin board? Is that the differentiation that you see?

THE WITNESS: Well, in regular meeting times and the topic that is presented only from one perspective.

THE COURT: But likely there is only one perspective being discussed frequently around the breakfast table in the cafeteria in an informal basis. I guess I'm --

THE WITNESS: It seems to me it could be just as likely that the opposite conversation could be there, though. They

may not be discussing Christianity. They may be discussing atheism and I -- I can't, you know --

* * *

RECROSS EXAMINATION

BY MR. VEITH:

Q. With reference to Interact, Dr. Findley, Interact engages in certain service projects, correct?
A. Yes.

Q. And do you see that as an endorsement of those projects the fact that Interact is a club at Westside high School?
A. An endorsement?

Q. Of the projects that --
A. By whom?

[623] Q. Pardon?
A. I'm sorry, I don't understand your question.

Q. Well, when the Interact students go out and do certain projects in the community, if they do that, do you see that -- because it's the interact Club at Westside High School, do you see that as the school endorsing that particular project?
A. Yes.

Q. Do you see the community viewing that as an endorsement by the school of that particular project?
A. Yes.

* * *

JAMES A. TANGDALL, Ph.D., having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DAUBMAN:

* * *

[625] Q. Are you familiar with the overall missions and goals of the School District?
A. Yes.

Q. Are the Westside High School student clubs intended to conform to the educational missions and goals of the School District?
A. Yes, they are.

Q. In your opinion, do they all in fact conform to those educational missions and goals?
A. Yes, they do in my opinion.

Q. Do the activities of the Westside High School student clubs serve the educational objective -- do all of them serve the educational objective of one or more classes or curriculum offerings at the high school?
A. All of them do, they serve one or more, yes.

Q. Does Chess Club develop, enhance, supplement [626] course objectives in high school in the Science and Mathematics Departments?
A. That's one of the purposes of it, yes.

Q. At one time in recent history, has Chess Club -- or, I'm sorry, has chess activity taken place in the Math Resource Center rooms?
A. Yes, it has.

Q. And why was that?
A. Well, as I recall, and I'm not sure exactly when, but I think it was some time probably around 1980, but I know that Mr. Glor (phonetic), the head of the Math Department, came to me and wanted to know if they could allow chess to be played in the Math IMC, and I questioned him about that and told him I would be concerned about the disruption that may cause et cetera, and he said that the Math people, the Math teachers, had felt that they would like to make that request in their Resource Center and see if they could control the noise level so it's possible, and I said, "Well, if you think you can do it, you know, it's your area to control," but then I pursued and asked him why he wanted that to happen, and he said it was their feeling that those students that had participated or been active chess players had performed better in some of their Math classes, and I said, "Well, if you feel that," I said, "fine, we will try it," and I think it lasted about a year, a year and a half, and they came back and [627] said, "You know, we think we better leave all the activity in the club because it is just too disruptive, they get too vociferous in there sometimes in their discussion," and so we

eliminated it from the regular Resource Center and restricted it to the Chess Club.

* * *

Q. Is one of the purposes and objectives of the Social Studies curriculum to prepare students for effective citizenship?
A. Yes, it is.

Q. Is effective citizenship enhanced, in your opinion, by participation in clubs such as Interact and Zonta?
A. Yes.

Q. May students earn extra credit in one or more Social Studies classes for participation in community projects?
A. Yes, they may.

Q. At a prior time at the high school, was that a required activity in one or more courses?
A. Yes, it was at one time a required activity.

Q. Now it is an extra credit activity, is that what [628] you are saying?
A. That is correct.

Q. One of the clubs listed in the Order on Pretrial Conference which has yet to be discussed in this case is Photography Club. Does the Photography Club exist at Westside High School at this time?
A. At this time I do not believe that it does because it is offered as a class in our Art Department as a regular

Photography class. It has existed in the past in a number -- from year to year as a club.

Q. In the Physical Education classes offered at Westside High School are students exposed to different types of sports activities?
A. Yes, they are.

Q. Could you briefly highlight the various activities?
A. Well, we have a number of activities in our Physical Education classes, from swimming to weight-lifting to volleyball to badminton, to golf, et cetera, and although we have some concepts running through that curriculum to develop certain cardiovascular learnings and also to visit -- or a concept dealing with nutrition et cetera, one of the major overriding goals of our Physical Education Department is to develop an interest in life-long activities, to assist kids in developing wise use of their leisure time, and also to develop to their maximum their physical and emotional health, [629] and we just think as many physical activities we can expose kids to so that hopefully one or more of them will interest certain kids, that they will carry that on beyond school, certainly more so than football, for example, or wrestling.

Q. Can you describe in general terms the goals and objectives of the Government curriculum at Westside High School?

A. Well, certainly one of the overriding goals of -- in every course of study, in every department, and certainly in Social Studies -- in every course of study there is a selected body of knowledge that is, you know, the heart of the course, but also in every course of study there are certain other goals that we feel are very important, and in Social Studies developing effective citizenship, developing leadership, developing community involvement, commitment to community activity, are strong goals in our Social Studies Department, and in our American Government class particularly one of the real goals is to develop an appreciation, a commitment to the democratic society and how that operates and the processes that that democratic process -- or what those democratic processes are.

Q. Could you describe for the Court the organization, structure and functions of Student Advisory Board and Student Forum?

[630] A. Student Advisory Board is an elected -- like it's been discussed many times in this court, most schools, a lot of schools call it the Student Council, and at least when I was Principal, up to three years ago, and I think it is still structured the same, the number may vary, but there are six elected representatives from each class that are on the Student Advisory Board and they go through an election process, they give speeches, et cetera, to run for that, and post signs throughout the building et cetera, and they have

their regular mock election -- or their regular election and they are elected to that.

In addition, that branch of the Student Government would probably be similar, although certainly there are a lot of dissimilarities -- but it would be similar to the United States Senate.

We also have what we call the Forum and each homeroom in that school, and there are probably a hundred homerooms in that school, each elect a Forum representative to that House of Representatives, so to speak, which we call the Forum, and that is our student government so that they can function in those activities that are designed by them and for them.

Q. Could you describe in general with brief terms the overall course goals and objectives of the Business Department or the Business curriculum of the high school?

[631] A. Well, certainly like I say, What we are trying to do in our Business Department is to acquaint students with the business world, to let them know of the kinds of skills and knowledge that they must have if they want to pursue that kind of a career once they graduate from Westside, whether that career would be immediately in the world of work or going on to college, and that's why we offer a whole array of clerical courses, a whole array of general business courses, including General Business Accounting, Business Law et cetera, and then we have an array of

Marketing and Sales courses, included Marketing and Sales, Distributive Education et cetera, and in addition to that we are certainly trying to teach students about entrepreneurship, free enterprises system, again the overall global kinds of things they need to know if they're going to go into a business-related career.

Q. Are you familiar with the Future Business Leaders of America student club at Westside?

A. Yes, I am.

Q. Would you describe for the Court the goals and objectives and operations of that club?

A. Well, the Future Business Leaders of America is a club that -- that is again opened to all students who wish to learn more about businesses, business opportunities, how they function, develop leadership skills, et cetera, and it is strongly endorsed by the State Department of Education, [632] and I think the literature is available to indicate that the State Department of Education feels that this is a organization that we should very highly encourage kids, students, to participate in. They have a State Leadership Conference every year and, as a matter of fact, I think that just occurred last week, and I just got a note from the sponsor of that this week, or last week, I guess, to keep me informed as to how well they had done, and I think our club is the largest club in the state. We captured 27 individual awards in Public Speaking, Accounting,

Marketing, all the various avenues in the Business Department on a competitive basis with other schools. That is a very detailed thing but it is certainly a very highly structured, business-oriented organization.

Q. To your knowledge are any or were any of these student clubs at Westside High School initiated by students?

A. Well, I think one of the things that I have heard discussed a lot during the last couple of days is the fact that a lot of -- and as Dr. Sybouts testified to and I certainly would concur with him, at least the history that I've read on education, that a lot of the outgrowth of student activities throughout this country have come about because of student interest, and a lot of our clubs at Westside, a seed has been planted because of student interest on their part, but the initiation of the club is -- is solely [633] our responsibility in that school. It's up to Mr. Huston as the Activities Director to investigate that possibility, to find out the kind of sponsors we might have available, the qualifications of that sponsor, what the -- what the objectives of that club are and how they tie in to our goals and missions of the school system, and if they conform to Board policy. There's -- the interest, the seed for interest is created lots of times by students, but the initiation of a club, every club there is initiated by the school and controlled by the school.

Q. Are there any clubs that exist at Westside High School that are directed and controlled by students as opposed to being under the direction and control of the administration?
A. No, there are not.

* * *

[634] BRIDGET COLLEET MERGENS, recalled as a rebuttal witness in her own behalf, having been previously sworn, testified as follows:

* * *

DIRECT EXAMINATION

BY MR. VEITH:

Q. Miss Mergens, you were present when Dr. Findley testified concerning the request that you made to him about meetings and clubs?
A. Yes, I was.

Q. Did Dr. Findley ever tell you that had you met informally and not told him about it or if he had not found out about your club formally, that he would have allowed you to continue to meet?
A. Yes. He said if -- if -- if I would have just gone ahead and met but not said anything, then it would have been -- it would have been okay.

Q. It would have been okay for you to go ahead and meet and not say anything to anybody about the meeting?
A. Yes.

* * *

[635] FROM DR. FINDLEY'S DEPOSITION

"Question: Have any --" -- by Mr. Davis -- "Have any political figures ever come to Westside to give speeches or political presentations in the classroom?

Answer: Uh-hun.

Question: Who were they?

Answer: I don't remember all of them. We had local Congressmen come and speak, Ed Zorinsky, Exon. We've had local City Council members, mayors. We've had the mayoral candidate and when we've done that we've had all of them. We have had Ernie Chambers and we have had Charlie Washington." --

Then, Your Honor, Page 77, starting at Line 6: (from Deposition of Dr. Findley)

"Question: (by Mr.Davis) If Bridget had never asked [636] permission to use the facilities and if her group had in fact gone to meet after school hours on a voluntary basis, what action would you have taken?

Answer: I probably would never have known. I can't stop kids from discussing things. I don't try to do that.

Question: If you had knowledge of the fact that they were in fact meeting without permission?

Answer: I would never stop an open discussion if they want to talk about it.

Question: If they were using one of the classrooms to discuss religious matters and they had not asked your permission to meet?

Answer: If they were on a regular basis, I would tell them that they couldn't do that.

MR. DAVIS: Do you have anything further?

BY MR. VEITH:

Question: --" --

Pardon me. I will skip, Your Honor, to Page 78, Line 6:

"Question (by Mr. Davis): You stated that if Bridget had not asked permission and had in fact gone to meet with other students on a voluntary basis in a public school classroom there at Westside and you had had knowledge of that, that you would have denied that, that you would have stopped them from meeting.

Answer: If it were on a regular basis.

[637] Question: If this were on a regular basis?

Answer: And if it were on a planned activity, but if it's an off-the-cuff discussion I can't do that.

Question: On what basis would you have to stop the discussion?

Answer: If this were regularly planned and they regularly planned to meet and set up regular meetings, I'd tell them they couldn't do that.

Question: What if a group of kids decided to begin to meet in a public school classroom to play checkers?

Answer: I wouldn't let them do that unless they had a sponsor, if they did that regularly, unless we tied it to our goals and objectives. We'd have to talk about it with them. To just have a group of kids meet without a sponsor in any classroom, that means we're liable. If anything would happen, I'd be liable. So I've got to take that into consideration, too.

Question: If a group of students meet during class hours during I believe they call it 'comp' time or modular instruction time, modular scheduling, if they meet, okay, if a group of students decided to meet --" -- pardon me -- "to begin meeting on a regular basis during the modular scheduling time at Westside and the subject matter of their meeting was religious, what action would you take?

Answer: I wouldn't let them meet if it were on a regular [638] basis.

Question: If the subject matter was what you would consider not religious, what would you do?

Answer: If they regularly met in the classroom?

Question: Yes.

Answer: I would not let them meet.

Question: For what reason?

Answer: They wouldn't have a sponsor available. We do not have during our regular day meetings. We discourage kids meeting in open classrooms. We have study centers for them to go to because we do not have a sponsor person for them." --

* * *

[641] 15) That on March 4, 1986, plaintiff Mergens petitioned defendant Board of Education for permission for the proposed Christian Club to meet at Westside High School. [642] As explained to the Board by plaintiff Mergens, the Christian Club would not have a faculty sponsor except as required by School Board policy for custodial purposes. If required, a faculty sponsor would attend in a nonparticipatory capacity only. The Board of Education voted to uphold the denial of defendants Findley, Tangdall and Hansen for plaintiff Mergens to form such a club.

* * *

18) That there are no space limitations or time and place restrictions which would prevent plaintiffs' [643] proposed Christian Club from meeting at Westside High School."

COMMUNITY RELATIONS

USE OF SCHOOL FACILITIES 7260

There have been recent requests by community groups and school personnel to use our facilities on Sunday. Particular requests have centered on the ABC Building for receptions, teas, and dinners.

In view of our marketing strategy and our emphasis to serve as a keystone to our community, we recommend the elimination of the statement: "Use of the facilities shall not be permitted on Sundays, except in the case of an extenuating emergency."

While the elimination of the statement does not encourage use of facilities on Sundays, it does give the Superintendent authority to grant permission.

PLAINTIFF'S TRIAL EXHIBIT 54

WESTSIDE COMMUNITY SCHOOLS

USE OF SCHOOL FACILITIES

REVISED - AUG. 10, 1982

ELEMENTARY

Cost - $25.00 for the first two hours plus $12.50 for each additional hour or fractional part thereof. In addition there will be added a charge of $12.00 per hour for any overtime custodial hours.

Saturday - $25.00 for the first three hours plus $12.50 for each additional hour or fraction thereof. In addition there will be a charge of $12.00 an hour for custodial time.

JUNIOR HIGH & SENIOR HIGH (Gym or Cafeteria)

Cost - $35.00 for the first two hours plus $12.50 for each additional hour or fractional part thereof. In addition there will be a charge of $12.00 an hour for any overtime custodial hours.

Saturday - $35.00 for the first three hours plus $12.50 for each additional hour or fraction

PLAINTIFF'S TRIAL EXHIBIT 55

thereof. In addition there will be a charge of $12.00 an hour for custodial time.

WESTSIDE HIGH SCHOOL AUDITORIUM (Special Permission Needed)

Cost - $200.00 for the first two hours plus $50.00 an hour each additional hour or fraction thereof. In addition there will be a charge of $7.00 an hour for a stage manager when needed.

Custodial time - In addition to the above there is to be added a charge of $12.00 per hour for any overtime custodial hours.

NO SCHOOL FACILITY CAN BE USED AFTER 11:00 P.M.

Board of Education
Policy 7260
((See reverse side)

USE OF SCHOOL FACILITIES.....7260

It is the intention of the Board of Education to cooperate with school related organizations and community groups in providing the use of school facilities for their meetings and functions. However, the utilization of school facilities by community groups will never take precedence over the use of buildings by school personnel.

In compliance with state law and because of the need to protect buildings from abuse, and guard against possible interference with the normal use of buildings for school sponsored activity, the following regulations will apply:

All groups that are not school sponsored must obtain permission from the Superintendent. Use of the facilities shall not be permitted on Sundays except in the case of an extenuating emergency.

When building facilities are made available to an eligible group, custodial service for the cleaning, light and heat as needed will be furnished by the school. If costs for custodial services are charged, the payment must be sent directly to the office of the Superintendent. In no event shall the custodian be paid by the agency using the school facilities.

Any person or group renting or using school facilities shall assume responsibility for maintaining order, protecting property, and providing and assuring the safety of persons participating or attending and otherwise following the general rules pertaining to the use of the building.

Any person or group using school facilities and equipment must pay for any unnecessary wear and tear, destruction or damage of such facilities and equipment. It shall be the judgment of the Superintendent as to the amount to be paid, based upon the cost of repairing or replacing such damage or wear or tear. Such persons or groups shall also be liable for any action brought about by any person as a result of such use of facilities and equipment.

Since public agencies may not, under the state constitution, further any religious group, religious groups may not use any school facilities or equipment for the purpose of holding religious services, except in an emergency.

School facilities will not be used for profit making by any group except those organizations established within the schools.

No activity or entertainment may be held or presented in school facilities of a lewd or morally

objectionable nature, or which advocates or favors, or has the reputation of advocating or favoring, unlawful violence or rebellion against citizens of the United States or which is unlawful.

BY SPECIAL YOUTH GROUPS

Boy Scouts, Girl Scouts, Campfire, and similar youth groups properly chaperoned and supervised by a responsible adult may use designated parts of the school building as a meeting place without charge, provided they are held while the school is normally open, a custodian is available, and there is minimum interference with custodians and other school personnel.

School facilities may be used for the Saturday and the summer recreation programs conducted by the Omaha Parks and Recreation Department for the benefit of our children.

BY SCHOOL COMMUNITY ASSOCIATIONS

Adult groups sponsored by the school, such as parent organizations, and educational groups, may use the schools for meetings, upon approval of the Superintendent.

BY SCHOOL PERSONNEL

An employee of the Westside Community Schools shall not use school facilities, materials, or equipment for personal use or gain.

BY NON-SCHOOL GROUPS OR PERSONS

Non-school groups or persons, but limited to non-profit organizations, may be permitted to use or rent school facilities and equipment. The eligibility of these groups shall be determined by the Superintendent.

Eligible groups, having obtained permission from the Superintendent, will pay the established rental fee as approved by the Board.

The eligible groups, permitted to use the school facilities: (1) must be known by the school officials to possess financial resources sufficient to cover all rentals and possible damage, and (2) may be required to post a bond or provide adequate insurance.

INSTRUCTION 6180

RECOGNITION OF RELIGIOUS BELIEFS AND CUSTOMS

The Board of Education believes in the preservation of and respect for private religious beliefs. Students adhering to a specific set of religious beliefs or holding to little or no belief shall be alike respected.

No teaching within the schools shall be sectarian in nature. If any school program or instruction is, in any way, imposing upon a student's religious belief, such student may be excused from participation.

The Board recognizes the importance of teaching high moral and ethical values by precept and example in our public schools. Students will be encouraged by the staff to develop high moral and ethical values under the leadership of their parents and religious leaders.

"Each teacher employed to give instruction in any public. . . school. . . shall so arrange and present his instruction as to give special emphasis to common honesty, morality, courtesy, obedience to law, respect for the national flag, the Constitution of the United States, and the Constitution of the State of Nebraska, respect for parents and the home, the dignity and necessity of honest labor, and

other lessons of a steadying influence which tend to promote and develop an upright and desirable citizenry."
Legal Reference: Statute 79-214

WESTSIDE COMMUNITY SCHOOL
DISTRICT 66

The regular meeting of the Board of Education of School District 66 was convened in open and public session at 7:30 p.m., March 4, 1985, at the ABC Building, 909 South 76 Street, Omaha, Nebraska.

Board members present: Wayne Meier, John Goldner, Dan Garver, Helen Jean Schorr, and Helen Kelley.

Notice of the meeting and the agenda subjects was given in advance by publication in The Daily Record on Friday, March 1, 1985; a copy of which is attached to the official minutes. Notice of this meeting and the availability of the agenda was simultaneously given to all members of the Board of Education and available to anyone at the Board of Education offices. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

Staff members in attendance: Ken Hansen, Jim Tangdall, Bill Hoyt, Don Erickson, Rod Johnson, Ken Bird, Bud Robinson, Lorraine Boyd, Jim Findley, Verne Moore, and Beverly Carlson.

Visitors: See attached list.

Student Advisory Board members present: Tim Bloomingdale, Ted Thompson, Dirk Hofschire, Brad Rauch, and Ruth Campbell.

The meeting was called to order at 7:45 p.m. by Mr. Meier. He acknowledged that the meeting had been publicly announced and the agenda was available to any interested parties.

A motion was made by Mr. Garver, seconded by Mrs. Kelley, to approve the minutes of February 4 and February 18, 1985, as presented. Motion carried unanimously by roll call vote.

The Treasurer's Report was given by Mrs. Schorr, along with the motion to approve expenditures amounting to $1,903,883.07. Second, Dr. Goldner. Motion carried unanimously by roll call vote. Mrs. Schorr reported that with 48% of the budget expended, everything is in good shape. (A detailed copy of the Treasurer's Report is attached to the official minutes.)

Mr. Meier stated that the Board of Education had received a letter from attorney Douglas Veith who asked to appear on the agenda as the representative of Bridge Mergens, a Westside High School student, regarding the federal equal access law. (A copy of the letter is attached to the official minutes.)

Mr. Veith addressed the Board and stated that the issue is whether or not the School Board would elect to pass a motion

to change school policy concerning a religious group meeting at Westside High School. Mr. Veith stated that the meeting request was made under the 1984 federal equal access law which states that school districts with "limited open forum" policies must not deny access to their buildings to unsponsored student groups who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical or other content of the speech at such meetings.

Mr. Veith stated that his definition of "limited open forum" was if the school offered extra-curricular activities not directly tied to the curriculum and if only students participated in the forum.

Bridget Mergens addressed the Board, stating that students are encouraged to participate in activities of interest to them. The fellowship Bible study group would meet before school and attendance would be voluntary. Other area high schools allowing similar groups to meet include Burke, Papillion, South, Bellevue East and Bellevue West. All groups are student initiated. If an instructor is present, he is there to observe only. Attorney Veith stated that it would be Bridget's decision whether or not to take the matter to federal court (should the

Board deny her permission), which would be the first area test of the new federal law.

Board members questioned Superintendent Hansen as to the current Board policy. Dr. Hansen stated that according to Board policy, District 66 has a closed forum, which permits school buildings to be used only for school-sponsored, curriculum-related activities.

A motion was made by Mr. Garver, seconded by Mrs. Kelley, that the Board uphold an earlier administrative decision to deny Bridget Mergens permission to conduct a fellowship Bible study group at Westside High School, which is consistent with District 66 policies. Voice Vote: Affirmative: Garver, Goldner, Kelley and Meier. Negative: None. Abstain: Schorr. Motion carried.

* * *

There being no further business, Mr. Meier adjourned the meeting at 9:00 p.m.

/s/Dan Garver
Secretary

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

(Caption of case omitted in printing)

AFFIDAVIT OF JAMES E. FINDLEY
IN OPPOSITION TO
REQUEST FOR PRELIMINARY INJUNCTION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

COMES NOW James E. Findley, upon being first duly sworn on oath, and deposes and states the following in opposition to the request of plaintiffs for a preliminary injunction in the above captioned case.

1. That I am the Principal of Westside High School and one of the named defendants herein.

2. That I am familiar with the policies of District 66 and Westside High School regarding student clubs and organizations.

3. That I am familiar with the student clubs and organizations which currently exist at Westside High School,

PLAINTIFF'S TRIAL EXHIBIT 61

which such clubs and organizations are generally described in Exhibit "A" attached hereto and incorporated herein by reference.

4. That each of said student clubs and organizations are either curricular or are directly related to the curriculum of Westside High School.

5. That each of said student clubs and organizations are directly related to the educational mission and goals of the Westside Community Schools, as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.

6. That each of said student clubs and organizations are approved by Westside High School and District 66 and have one or more faculty sponsors.

7. That Bridge C. Mergens made a formal request to me for permission to form a student religious club or organization; that club be officially sanctioned as a Westside High School club; and that said club be permitted to conduct

fellowship meetings in a Westside High School classroom immediately prior to school.

8. That I denied such request on the grounds that it did not comply with the policies of District 66 and Westside High School.

9. That I offered to meet with the Minister or Pastor of Countryside Community Church, 8787 Pacific Street, Omaha, Nebraska, which such Church is located approximately 100 feet from Westside High School, to arrange for the group to conduct their fellowship meeting at that location.

10. That Bridget Mergens stated that she and her group were unwilling to meet at that location because it would not be the same as meeting at Westside High School.

11. That Westside High School has what is commonly referred to as modular scheduling, whereby students are allowed a substantial amount of free or unscheduled time.

12. That under the modular scheduling at Westside High School, approximately 20% of the time of sophomores is unscheduled, approximately 30%-40% of the time of juniors is unscheduled, and approximately 40%-50% of the time of seniors is unscheduled, and seniors are allowed to leave school grounds.

13. That during unscheduled time, Westside High School students are allowed to be in and use any part of the school building that is not then being used for regularly scheduled classes, including but not limited to resource center, labs, swimming pool, gymnasium and cafeteria.

14. That during unscheduled time, Westside High School students are allowed to discuss any topic among themselves, including politics, philosophy, religion, literature, and any other topic.

15. That I have never requested any student to stop or refrain from discussion of religious topics during such unscheduled time.

16. That the regular school year ends May 30, 1985.

17. That in the event any one or more of the student clubs or organizations are determined by the Court to be non-curriculum related and if the Court determines that Westside High School has a limited open forum under the Equal Access Act, I would recommend to the administration and Board of Education that it consider amending the policies to discontinue such student clubs or organizations.

DATED May 10, 1985.

FURTHER AFFIANT SAITH NOT.

/s/James E. Findley
James E. Findley

SUBSCRIBED and sworn to before me this 10th day of May, 1985.

/s/Allen E. Daubman
Notary Public

(Exhibit "A" to this Affidavit omitted in printing. It appears as Trial Exhibit 63 reproduced at page 479 of this Appendix.)

**MEETING
THE
CHALLENGE**

(illustration omitted in printing)

**Mission & Goals
of the
WESTSIDE
COMMUNITY
SCHOOLS**

A Blueprint for the Future

Behind every successful program is a successful plan, and the Westside Community School system has called upon a large group of community members to help establish a Mission statement and set of Goals.

Parents, staff members, students and Board of Education members joined together as a task force in 1983 to address the changing priorities of an increasingly complex society. The result was a revision of the District 66 Mission and Goals which were adopted a decade earlier.

EXHIBIT "B"

The task force was charged with the responsibility of determining whether the Mission and Goals remained relevant and vital to today's students and society's demands.

After lengthy study, the task force made several changes in the goals to reflect changing priorities in education, but chose to make only minor changes in the basic philosophical statement contained in the Mission.

Working within this general set of guidelines, the District will endeavor to provide a sound education for each student and to meet the needs of the community through a variety of programs and projects calling for cooperation between the district and its constituents.

District 66 views the overall Mission and Goals as an outline for helping us to improve the quality of living for the entire community.

The Mission

Public education is a great constructive force for the preservation of freedom and advancement of the American democratic way of life.

The Westside Community School System, therefore, is dedicated toward being responsive to the educational needs, values, and aspirations of our citizens,

and believes that the school has an important role in helping to improve the quality of living in our community.

In our educational program, each individual will be accepted, with equal opportunity to learn, develop, and succeed. The dignity, the worth, and the uniqueness of all individuals and their heritage will at all times be preserved.

All students have the right to an education fitting their own needs, interests, and abilities. Students will be involved, when appropriate, in planning and assuming responsibilities for their own educational programs. Through the recognition of individual differences, our schools will provide the opportunities for all students to develop the values, attitudes, skills and knowledge necessary to become self-confident, responsible, productive, and contributing members of our society.

The Goals

Knowledge and Skills (Primary Responsibility)

Basic Skills - To acquire knowledge in the basic skills of communication and computation.

Skills to Use Knowledge - To develop skills for creative, constructive and critical thinking, problem solving, and evaluation.

Science and Technology - To gain knowledge and experience in the natural sciences, the physical environment, and in technological literacy.

Arts, Humanities, Social Sciences - To gain knowledge and experience in the fine and practical arts, humanities, and social sciences.

Economic Understanding - To develop the capacity to be an effective participant in the free enterprise economic system.

Health and Physical Fitness - To acquire knowledge and develop skills and interests for optimal physical and emotional health.

Global Education - To gain knowledge and understanding of the peoples of the world, their cultures, languages, and interdependence.

Personal Development
(Shared Responsibility)

Self Worth - To assist in the development of self understanding and a positive self concept.

Human Relationships - To develop the capacity to participate in meaningful personal and social relationships.

Citizenship - To develop the behaviors, values, and attitudes associated with responsible participation and patriotism in a democratic society.

Ethical Character - To refine and nurture behaviors based on acceptable standards of conduct and moral judgment.

Preparation for Future - To develop an ability to live in and adapt to a world of rapid change and technological advances.

Career Preparation - To acquire career concepts and career skills.

Respect for Learning - To acquire a positive attitude toward learning as a life-long process.

Use of Personal Time - To experience and participate in opportunities for life-long use of leisure time.

(Three photographs omitted in printing)

"The Pride Shines Through"

School District 66 is home to one high school, three junior highs and 10 elementary schools which form the Westside Community Schools.

Our total enrollment of just over 5,300 students makes us one of the larger districts in Nebraska, but we pride ourselves in a small-town caring and sharing attitude when it comes to participation in the community.

We believe that we are responsible to the entire community for providing the District's young people with a fine education and for establishing programs which our many constituent groups can use.

Some of the programs we offer, in addition to those within the schools, include early childhood education centers, adult education and an expanding volunteer program.

We welcome your questions about the District 66 schools and programs and invite you to write or call us: District 66, 909 South 76th St., Omaha, NE 68114; (402) 391-0646.

STUDENT ACTIVITIES

August, 1984

BAND - This activity is included in our regular curriculum. Extensions of this activity include Marching Band, Ensembles, Pep Band, and Concert Jazz Band. Performances, presentations, and programs are presented throughout the school year.

CHESS CLUB - This activity is for those interested in playing chess. Opportunities to play are held after school throughout the school year.

CHEERLEADERS - A girls sports cheerleader team is made up of a junior varsity and varsity. The boys sports cheerleaders consist of sophomores, junior varsity, and varsity. Tryouts for these spirit groups are held each spring.

CHOIR - This is a course offered as part of the curriculum. Extensions of this class include Boys and Girls Glee, Warrior Voices, and Concert and Chamber Choirs. Membership in these activities are determined by enrollment and tryouts.

CLASS OFFICERS - Voting and selection of junior and senior class officers for the following year are held each spring. Students interested in being a class officer will need

PLAINTIFF'S TRIAL EXHIBIT 63

to secure support, be willing to make a presentation to their class, and serve their class in an officer capacity for the following year.

DISTRIBUTIVE EDUCATION (DECA) - This is an organization that is an extension of the Distributive Education class. Membership in this activity is offered to those students involved in D.E. The club for the current year is formulated at the beginning of school each fall.

SPEECH & DEBATE - This is an activity for students interested in participating on a competitive level in both speech and debate. The season begins the first week in November and continues through March.

DRILL SQUAD & SQUIRES - These are spirit groups primarily concerned with performing at half time at football and basketball games. Selection for these squads is made in the spring of each school year. These marching units are also support groups for other athletic teams.

FUTURE BUSINESS LEADERS OF AMERICA (FBLA) - This is a club designed for students interested in pursuing the field of business. It is open

to any student with an interest. Membership begins in the fall of each school year.

FUTURE MEDICAL ASSISTANTS (FMA) - This is a club designed for students with an interest in pursuing any area of medicine. The organization assists in securing blood donations from individuals at Westside High School for the Red Cross. Meetings are held to inform the membership about opportunities in the medical field. Memberships are accepted at the beginning of school each fall.

INTERACT - This is a boys volunteer organization associated with the Rotary Club of America. Its basic function is to do volunteer work within the community. They are also a support and spirit group for our athletic teams. Membership is open to 11th and 12th grade boys; with membership opportunities being available in the fall of each school year.

INTERNATIONAL CLUB - This is a club designed to help students understand people from other countries and is developed through our foreign language classes. French, German, Spanish, and Latin teachers encourage membership in this organization in the fall of

each year. Sponsorship of foreign students, who attend Westside, is one of their major activities.

LATIN CLUB - (Junior Classical League) - This is a club designed for those students who are taking Latin as a foreign language. This club competes in competitive situations between schools and is involved with state competition as well. Students have the opportunity to join JCL beginning in the fall of each school year.

MATH CLUB - This club is for any student interested in mathematics. Meetings are held periodically during the school year.

STUDENT PUBLICATIONS - This activity includes classes offered in preparation of the yearbook (Shield) and the student newspaper (Lance). Opportunities to learn about journalism are provided for students interested in these areas. Membership in Quill and Scroll is an extension of a student's involvement in school publications.

STUDENT FORUM - Each homeroom elects one representative as a member of the student forum. Their responsibility is to provide ideas, make suggestions, and serve as one informational group to the staff and administration for

student government. Selections are made for this membership in the fall of each school year.

DRAMATICS - This activity is an extension of a regular academic class. School plays, one-act plays, and musicals are provided for students with an interest and ability in these areas. Tryouts for these productions are announced prior to the selection of individuals for these activities.

CREATIVE WRITING CLUB - This is an organization that provides students, with the interest and capability, an opportunity to do prose and poetry writing. This club meets periodically throughout the year and publishes the students' work. Any student with an interest is encouraged to become a member.

PHOTOGRAPHY CLUB - This is a club for the student who has an interest and/or ability in photography. Students have an opportunity to take photos of school activities. A dark room is provided for the students' use. Membership in this organization begins in the fall of each school year.

ORCHESTRA - This activity is an extension of our regular curriculum. Performances are given periodically throughout the year.

Tryouts are held for some special groups within the orchestra. All students signed up for that class have the opportunity to try out.

OUTDOOR EDUCATION - This activity is an opportunity for interested students to be involved in the elementary school Outdoor Education Program. High school students are used as camp counselors and leaders for this activity. Students are solicited to help work prior to the fall and spring Outdoor Ed Program.

SWIMMING TIMING TEAM - Offers any interested student a chance to be a part of the Timing Team that is used during the competitive swimming season. Regular season meets, invitational meets, and the metro swim meet are swimming activities at which these volunteers will work. Membership in this group is solicited prior to the beginning of the competitive season.

STUDENT ADVISORY BOARD (SAB) - Is another facet of student government. Members are elected from each class to represent the student body. These elections are held at the same time class officers are elected. Any student has an opportunity to submit their name for consideration.

INTRAMURALS - Are offered to Westside students these following times. Basketball begins the latter part of November and continues through February. Co-educational volleyball is the spring intramural activity. Announcements are made to students so they can organize and formulate teams prior to the beginning of each of these activities.

COMPETITIVE ATHLETICS - Westside High School offers to students the opportunity to try out and participate in eighteen varsity sports. Twenty-seven different competitive teams are available for students at each grade level. The seasons when these are offered and the procedures for getting involved can be found in the Warrior Bulletin that is published and distributed in August, prior to the opening of school.

ZONTA CLUB (Z CLUB) - Is a volunteer club for girls associated with Zonta International. Approximately one hundred junior and senior girls are involved in this volunteer organization. Eleventh and twelfth grade students are encouraged to join in the fall of each school year.

SUBSURFERS - Is a club designed for students interested in learning about skin and scuba diving and

other practical applications of that sport. Opportunities in the classroom and in our pool are made available for students involved in this activity. Membership is solicited in the fall and spring of each year.

WELCOME TO WESTSIDE CLUB - Is an organization for students who are interested in helping students new to District 66 and to Westside High School. Activities are held for them which are geared toward helping them to become a part of our school curriculum and activities.

WRESTLING AUXILIARY - Is for girls interested in supporting our competitive wrestling team. Membership is solicited prior to the competitive wrestling season.

NATIONAL HONOR SOCIETY - Westside Honor Society is a chapter of the national organization and is bound by its rules and regulations. It is open to seniors who are in the upper 15% of their class. Westside in practice and by general agreement of the local chapter has inducted only those juniors in the upper 7% of their class. The selection is made not only upon scholarship but also character, leadership, and service. A committee meets and selects those students who they

believe represent the high qualities of the organization. Induction into NHS is held in the spring of each year.

STUDENTS

STUDENT CLUBS AND ORGANIZATIONS 5610

The Board of Education regards student clubs and organizations as a vital part of the total education program as a means of developing citizenship, wholesome attitudes, good human relations, knowledge and skills.

School-sponsored clubs, and organizations are those directly under the control of the school administration, and shall have faculty sponsorship. The Superintendent shall establish operational guidelines for clubs and organizations which shall function for the welfare and the best interest of the students and the school.

Such clubs and organizations shall not be sponsored by any political or religious organization, or by any organization which denies membership on the basis of race, color, creed, sex or political belief.

Students participating in out of school clubs or organizations may not identify the clubs as school-affiliated organizations without prior administrative approval.

PLAINTIFF'S TRIAL EXHIBIT 71

STUDENTS

FREEDOM OF EXPRESSION 5450

The Board of Education affirms that its policies and the rules and regulations promulgated thereunder shall be applied in a manner so as to assure freedom of expression for students consistent with the comprehensive authority of the Board and administration under the laws of the State of Nebraska to prescribe and control conduct in the schools.

The primary liberties in a student's life involve the process of inquiry and of learning, of acquiring and imparting knowledge, and of exchanging ideas. This process requires that students have the right to express opinions, to take stands, and to support causes, publicly or privately, in a manner consistent with the rights of others and the lawful functions and objectives of the school and the school district.

Freedom of expression does not extend to expressions of a lewd, profane or obscene nature, those which are libelous, or slanderous, those which by their utterance inflict injury or tend to incite an immediate breach of the peace, or those which do, or which school authorities can reasonably predict will, result in substantial and material interference with the work and discipline of the schools or the rights of others.

PLAINTIFF'S TRIAL EXHIBIT 72

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

(Caption of case omitted in printing)

AFFIDAVIT OF JAMES A. TANGDALL
IN OPPOSITION TO
REQUEST FOR PRELIMINARY INJUNCTION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

COMES NOW James A. Tangdall, upon being first duly sworn on oath, and deposes and states the following in opposition to the request of plaintiffs for a preliminary injunction in the above captioned case.

1. That I am the Associate Superintendent of The Westside Community Schools (District 66) and one of the named defendants herein.

2. That I am familiar with the policies of District 66 and Westside High School regarding student clubs and organizations.

PLAINTIFF'S TRIAL EXHIBIT 76

3. That I am familiar with the student clubs and organizations which currently exist at Westside High School, which such clubs and organizations are generally described in Exhibit "A" attached hereto and incorporated herein by reference.

4. That each of said student clubs and organizations are either curricular or are directly related to the curriculum of Westside High School.

5. That each of said student clubs and organizations are directly related to the educational mission and goals of the Westside Community Schools, as more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.

6. That each of said student clubs and organizations are approved by Westside High School and District 66 and have one or more faculty sponsors.

7. That Bridget C. Mergens made a formal request to me for permission to form a student religious club or organization; that club be officially

sanctioned as a Westside High School club; and that said club be permitted to conduct fellowship meetings in a Westside High School classroom immediately prior to school.

8. That I denied such request on the grounds that it did not comply with the policies of District 66 and Westside High School.

9. That Westside High School has what is commonly referred to as modular scheduling, whereby students are allowed a substantial amount of free or unscheduled time.

10. That under the modular scheduling at Westside High School, approximately 20% of the time of sophomores is unscheduled, approximately 30%-40% of the time of juniors is unscheduled, and approximately 40%-50% of the time of seniors is unscheduled, and seniors are allowed to leave school grounds.

11. That during unscheduled time, Westside High School students are allowed to be in and use any part of the school

building that is not then being used for regularly scheduled classes, including but not limited to resource center, labs, swimming pool, gymnasium and cafeteria.

12. That during unscheduled time, Westside High School students are allowed to discuss any topic among themselves, including politics, philosophy, religion, literature, and any other topic.

13. That I have never requested any student to stop or refrain from discussion of religious topics during such unscheduled time.

14. That when Bridget C. Mergens was a junior at Westside High School, I was the principal of Westside High School; that I observed Bridget Mergens in the art lab debating a bible subject; and that I did not request her to refrain from such discussion.

15. That the regular school year ends May 30, 1985.

16. That in the event any one or more of the student clubs or organizations are determined by the Court to be non-curriculum related and if the Court

determines that Westside High School has a limited open forum under the Equal Access Act, I would recommend to the Board of Education that it consider amending the policies to discontinue such student clubs or organizations.

DATED May 10, 1985.

FURTHER AFFIANT SAITH NOT.

/s/James A. Tangdall
James A. Tangdall

SUBSCRIBED and sworn to before me this 10th day of May, 1985.

/s/Allen E. Daubman
Notary Public

(Exhibit "A" to this Affidavit omitted in printing. It appears as Trial Exhibit 63 reproduced at page 479 of this Appendix.)

(Exhibit "B" to this Affidavit omitted in printing. It appears as Exhibit "B" to Trial Exhibit 61 - Affidavit of James E. Findley - reproduced at page 468 of this Appendix.)